



## **CONVICTION INTEGRITY REVIEW: *PEOPLE V. JESSE FRIEDMAN***

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## Executive Summary

### Introduction

In 1987 and 1988, Arnold Friedman (“Arnold”) and his son Jesse Friedman (“Jesse”) were jointly charged with sodomizing, sexually abusing, and endangering the welfare of seventeen boys, the students of an afterschool computer class taught by Arnold at their home in Great Neck, New York. Arnold ultimately pled guilty to these crimes in March 1988, and was sentenced to serve ten-to-thirty years in prison. In December 1988, Jesse too pled guilty, after admitting under oath to a judge in open court that he had, in fact, sodomized and sexually abused his father’s students. Jesse received a sentence of six-to-eighteen years in prison. Shortly after his sentence was imposed, Jesse appeared on the nationally-televised *Geraldo Rivera Show* to reiterate his guilt, explaining that he, too, was a victim, and that his father had molested him when he was a child. Arnold Friedman died in prison in 1995. Jesse was paroled from prison in 2001. Upon his release, Jesse was adjudicated a level three sex offender.

After viewing the 2003 film *Capturing the Friedmans*, which sought to question the integrity of the case against Jesse and his father, Jesse filed, for the first time, a motion in state court seeking to vacate his conviction. That motion was denied. After exhausting his appellate options in state court, Jesse filed a petition for a writ of habeas corpus in federal court. The United States Federal District Court, Eastern District of New York dismissed his petition as time-barred, but allowed him to appeal to the Second Circuit Court of Appeals. In 2010, the Second Circuit affirmed the order of the District Court, but recommended that the Nassau County District Attorney (“NCDA”) undertake a full investigation to determine whether Jesse was wrongfully convicted.

In the course of that recommendation, the court expressed concern about four specific points of inquiry raised in *Capturing the Friedmans*: (1) that flawed interviewing techniques by the police might have been used, leading to false allegations; (2) that children may have been hypnotized to remember abuse, possibly creating false memories; (3) that moral panic led children to make outrageous allegations of bizarre and ritualistic sexual abuse, and; (4) that pressure from police, prosecutors, and the County Court judge who presided over the case may have rendered Jesse’s plea involuntary.

After studying the Second Circuit’s decision and recommendation, Nassau County District Attorney Kathleen Rice announced that she would reopen the case and thoroughly investigate the possibility that Jesse Friedman stood wrongfully convicted of the crimes to which he pled guilty. Rice assigned senior prosecutors (the “Review Team”), none of whom were with the District Attorney’s Office at the time of Jesse’s guilty plea, to lead the examination of the conviction. Those prosecutors, with the assistance of nationally-recognized criminal justice experts (the “Advisory Panel”), conducted an almost three-year investigation into the facts leading up to, and resulting in, Jesse Friedman’s conviction. The re-investigation focused on the question of whether there existed a “reasonable probability” that Jesse was wrongfully convicted.

After this exhaustive investigation, the District Attorney concludes that Jesse Friedman was not wrongfully convicted. The four principal concerns raised by the Second Circuit are not substantiated by the evidence. Further arguments for exoneration offered by advocates for Jesse lack the merit or weight required to overturn this conviction. In fact, by any impartial analysis, the re-investigation process prompted by Jesse Friedman, his advocates, and the Second Circuit, has only increased confidence in the integrity of Jesse Friedman's guilty plea and adjudication as a sex offender.

### **Arnold Friedman's Pedophilia Leads To An Investigation**

Jesse Friedman's conviction has its roots in a federal investigation of Jesse's father Arnold, a retired schoolteacher. That investigation began in 1984 when a United States Postal Inspector discovered that Arnold had solicited and traded child pornography through the U.S. mail. The investigation ended three years later when agents arrested him on November 3, 1987, and executed a search warrant to recover child pornography from the Friedman home. In the course of that search, federal agents seized more than thirty items of child pornography from Arnold's office, and also discovered a list of names of local children. These children were the members of an afterschool computer class, taught by Arnold from 1982 until 1987. This computer class met in Arnold's home, in the room adjoining his office. Investigators soon learned that Jesse assisted in these classes from 1984 until he left for college in the fall of 1987.

The discovery that a pedophile instructed young children in small classes, in the privacy of his home, led to a separate investigation by the Nassau County Police Department ("NCPD"). The investigative team was led by Detective Sergeant Frances Galasso of the Sex Crimes Squad, who was assisted by an additional nine detectives and two police officers. Whenever possible, the team worked in pairs.

### **The Investigation's First Phase: November 12-25, 1987**

The state investigation of the Friedmans can be broken into three distinct phases. The first phase covered the time between the investigation's start on November 12, 1987, and the arrest of Arnold and Jesse on state charges on November 25, 1987. During that initial twelve-day period, at least thirty-five children were interviewed. Twelve boys told the detectives that Arnold Friedman had either engaged in illegal sexual conduct with them or had shown them pornography or sexually explicit videogames. Two of those boys identified Jesse as participating in criminal sexual activity, one of whom stated that Jesse photographed Arnold engaging in acts of sodomy. Sworn statements taken by detectives during this period were extremely detailed, and ranged in length from two to ten handwritten pages. These statements, including those against Jesse, were taken in the immediate days following the start of the state investigation into Arnold Friedman.

### **The Investigation's Second Phase: November 25, 1987, to December 17, 1987**

During the second phase, from Arnold and Jesse's arrest until December 17, 1987, police obtained sworn statements from eleven victims, who said that Jesse engaged in criminal activity. By the end of the second period, only five weeks after the beginning

of their investigation, NCPD had conducted all interviews necessary to sustain the first and second indictments against Jesse, which were filed on December 7, 1987, and February 1, 1988, respectively. Within the investigation's first five weeks, thirteen boys gave detectives detailed statements outlining Jesse's criminal behavior.

### **The Investigation's Third Phase: December 18, 1987, to January 25, 1989**

The third phase of the investigation ran from December 18, 1987, until the case's conclusion more than one year later, when Jesse pled guilty to seventeen counts of sodomy and eight additional counts related to the abuse or exploitation of children, and was thereafter sentenced on January 25, 1989, to serve six-to-eighteen years in prison. This period also encompasses Arnold's March 25, 1988, guilty plea. Following that event, Arnold agreed to sit for a "close-out" interview with NCPD detectives in which he admitted to abusing forty-one children, specifically denied abusing twelve others, and generally denied abusing his former students at Woodmere Academy and Bayside High School. He spoke about the type of children he found attractive, and his method of grooming victims. He explained that younger children could be easily distracted with videogames, giving him free reign to do whatever he pleased with them. In exchange for this detailed post-conviction interview, Arnold received immunity from further prosecution.

Detectives resumed taking statements in April 1988. The majority of these interviews consisted of follow-up meetings with victims who had previously given statements against either Arnold or Jesse. In these accounts, some children substantially expanded Jesse's role in the abuse, in addition to including, for the first time, accounts of sexually explicit group activities, such as sexualized versions of "Leap Frog" and "Simon Says," which they said took place in open view in the classroom. Some victims also named three others who were involved in abusing them. Two of these three were never prosecuted, but a third, Ross Goldstein, a friend and schoolmate of Jesse's, was arrested after being identified by six of the victims. Goldstein and Jesse were ultimately indicted on November 7, 1988. Charges in this third indictment included numerous counts of sodomy and sexual abuse. In four transcribed interviews with his attorney and detectives, Goldstein admitted his own participation in the abuse of Arnold's students, and he agreed to cooperate against Jesse in exchange for a reduced sentence.

By the time the investigation concluded approximately one year after it began, police documented visits to 104 households, and identified sixty-nine children who attended the computer classes. At least twenty-five of those sixty-nine children reported criminal activity against one or both Friedmans. Fourteen students had testified against Jesse in the grand jury. Media and law enforcement claims that there may have been as many as 500 victims were substantially overstated.

### **Jesse's Prison Term**

Jesse served thirteen years in prison and was released in 2001. Between 2000 and 2001, he was disciplined for possessing in his cell a torn photograph from Harper's magazine of two pre-pubescent girls, one of whom is naked. He also was punished for



writing and distributing “fictional” stories that described violent and disturbing sexual acts, including incest, bestiality, and child rape.

## **The Second Circuit’s Concern That Jesse Friedman Was Wrongfully Convicted Was Not Substantiated**

### **1. There Is No Evidence That Improper Police Questioning Materially Tainted the Investigation**

The rapid pace and extensive reach of the initial police investigation undermine claims that police unduly influenced the victims. The very first child interviewed by the police alleged that Arnold rubbed him on his buttocks and read a book to him and other computer students containing “pictures of naked men.” Over the next two weeks, eleven more boys told the detectives, in essence, that Arnold had engaged in either illegal sexual conduct with them or showed them pornography or sexually explicit videogames. Two of these boys also implicated Jesse in criminal sexual behavior. One boy recounted that Jesse touched his penis over his clothes, and that Arnold and Jesse placed their penises near him and took photographs. Another boy stated that Arnold and Jesse would walk around the class with their penises exposed and ask children to touch them. This same boy told detectives that he touched Jesse’s penis. Five weeks into the investigation, a total of thirteen boys described criminal activity by Jesse, which led to, among others, charges of six counts of sodomy and fourteen counts related to sexual abuse.

Given this compressed timeline, it is unlikely that detectives would have been able to repeatedly visit any one household for hours at a time to induce a child to make false accusations. There were twelve law enforcement officials who comprised the investigative team. During the first two weeks, at least thirty-five children were interviewed. No single detective dominated the investigation, and different teams obtained incriminating statements from different victims. The Review Team spoke with many individuals, including complainants, non-complainants, and parent-witnesses, about the style of questioning police used. Those people, who were either interviewed or witnessed interviews conducted during the initial phase of the NCPD investigation, told the Review Team that police were not aggressive, did not engage in leading questioning, and, instead, let witnesses tell their stories. An exception was a complainant who was interviewed early in the original investigation. He wrote a letter in May 2013, claiming that his statements were the product of repeated questioning. This complainant refused to speak to the Review Team.

The Review Team found that some witnesses interviewed during the *third* phase of the investigation were asked pointed questions, and that police pressured them to disclose abuse. It is possible that detectives became more insistent after Arnold pled guilty, after many of the original victims named classmates who also were abused, and after Ross Goldstein cooperated against Jesse. In fact, the parent of Witness 28 recorded an example of one such interview. Her son, however, denied being abused. The Review Team is not aware of any victim interviewed during this time period who now alleges that he made a false statement; thus, the Review Team cannot conclude that such questioning produced any untruthful allegations.

## **2. The Review Team Found No Credible Evidence that Hypnosis Was Used on Any Complainant**

Allegations that hypnosis, group therapy, or individual therapy affected the Friedman case are unsupported by the record. Only one complainant, Witness 2, claims to have been subjected to hypnosis during this investigation. But, his treating psychologist swore in an affidavit that she had never hypnotized him. In addition, his allegation is fraught with inconsistencies. In an interview with the filmmaker of *Capturing the Friedmans*, given almost fifteen years after Jesse Friedman pled guilty, Witness 2 gave contradictory accounts, saying first that he disclosed abuse “the very first night” he spoke to the police, while later saying in another portion of the same interview, that the first time he recalled molestation was under hypnosis. As part of this investigation, the Review Team interviewed Witness 2. During that interview, Witness 2 suggested that he was not sure if hypnosis pre- or post-dated his interviews with police, and he seemed unclear about what hypnosis actually entailed. Moreover, the Review Team found no credible evidence that hypnosis was used on any victim.

Several children and a therapist remember engaging in group therapy, a treatment in which groups of victims are brought together by a therapist to discuss the abuse they suffered. Although that type of treatment could potentially distort a child’s memories, it did not in this case. The evidence revealed that group therapy did not begin until after the third indictment was filed and had no impact on any child’s statements to police or the grand jury.

Some witnesses were enrolled in private therapy with their own doctors. Given the speed with which the statements were made in the first two phases of the investigation, there is little possibility that therapy could have been so repeated, prolonged, or suggestive as to influence the children’s statements to the police. Some victims continued therapy up through the third indictment; but the Review Team found no evidence that this therapy distorted the victims’ memories in advance of their grand jury appearances. Any claim that it did is speculative.

## **3. The Friedman Case Is Distinguishable From “Moral Panic” Cases of the 1980s**

Advocates for Jesse Friedman have attempted to draw a parallel between this case and the unreliable “moral panic” cases of the 1980s, such as the 1984-90 prosecution of Virginia McMartin and her family for abuses that allegedly took place in their California preschool. But the cases are in no way similar. In the McMartin case, for example, more than 200 preschool children described suffering sexual abuse at the hands of their teachers, but only after enduring months of highly suggestive questioning by social workers under contract with state prosecutors. The initial complaint was made by a paranoid schizophrenic who claimed that her child’s abusers “flew in the air.” From that point, the case ballooned to include implausible allegations of what proved to be non-existent cavernous tunnels below the school, in which teachers would molest children as part of satanic rituals.

In the Friedman case, the victims were more than twice as old as the McMartin preschool accusers at the time they disclosed that they were abused, averaging almost eleven years in age. Many of the children disclosed abuse quickly. The case began with an admitted pedophile, Arnold Friedman, who indisputably collected and traded child pornography, and who admitted in his own words to a history of child sexual molestation stretching from his teens into his late adulthood.

Nor does Jesse fit the profile of the kindly teacher wrongfully accused by the community. Experts retained by his own trial counsel described Jesse, at the time, as a psychopath, a narcissist, and a drug abuser who was unable to tell right from wrong. And Jesse's and Arnold's decisions to plead guilty stand in stark contrast to defendants who, in cases like the McMartin case, ultimately elected trial despite the staggering sentences they faced if found guilty.

#### **4. Jesse Friedman's Plea Was Not a Product of Undue Coercion**

Jesse Friedman played a central role in his own defense, received competent and thorough legal advice, and weighed his options intelligently before entering his guilty plea. Primary sources, including letters, audio, and videotapes, show Jesse as a maker of his own destiny. Jesse pled guilty because his own calculations showed it to be the optimal strategy in light of the choices available to him, not because someone else forced him to do so.

In family meetings, Jesse led lively debates about the family's litigation strategy. In one, he urged his family to "try the case in the media." In other conversations, Jesse discussed a variety of strategies, such as subjecting "every" student to cross-examination and exploiting all inconsistencies.

One overriding topic of conversation was the benefit to Jesse of his father's guilty plea. Jesse believed that he could escape a guilty verdict only if he avoided being saddled with his father's acknowledged history with child pornography. He considered in detail which scenario would benefit him the most: having his father plead guilty or sitting next to him, with Arnold Friedman looking "like a guilty old man" proclaiming his innocence. After Arnold pled guilty, Jesse fired his first attorney, saying, "my lawyer believes I am guilty and I am not," and went on to interview at least twenty potential attorneys before hiring Peter Panaro.

In a forty-page transcript prepared on the eve of Jesse's guilty plea, Panaro probed with Jesse the reasons behind his decision to plead guilty, and summarized all the efforts he had made to mount a defense. Significantly absent from that document is Jesse's current claim that judicial or prosecutorial coercion, or even pressure from his family, forced his guilty plea. Panaro told Jesse that Judge Boklan "indicated that for each one of the charges that you are convicted of, she would *consider* some consecutive time." A fair reading of the facts indicates that Judge Boklan likely warned Jesse that a conviction after trial could, depending on the strength of the evidence, result in a harsh sentence involving consecutive periods of incarceration. However, judges are allowed to warn defendants of the maximum sentence they could face if the evidence supports all the charges. Indeed, in

cases of this magnitude, with the number of child victims alleging they were repeatedly sodomized by Jesse, a sentence that included consecutive prison terms would not have been uncommon, let alone excessive.

Panaro's transcript chronicled the wide variety of trial strategies he considered and ultimately rejected—complete innocence, coercion, mass hysteria, insanity and multiple personalities. Panaro arranged for Jesse to take a lie detector test, which demonstrated that he was not truthful. Panaro hired Dr. David Pogge, a prominent psychiatrist with a specialty in the treatment of adolescent sex offenders, to evaluate Jesse. Dr. Pogge's conclusions led him to classify Jesse as a "psychopathic deviant" and "pansexual" who was "self-centered, manipulative, egocentric" and who abused drugs. Dr. Pogge concluded that Jesse's personality was consistent with someone who was capable of committing the crimes with which he was charged.

Non-complainants proved almost entirely unwilling to speak with Panaro or Jesse's family. According to Arnold's lawyer, the defense conducted its own outreach to potential witnesses, hoping "that one or more of the people would say, 'The [prosecution's case] is just not true.' But that just didn't happen."

At the time of his plea, Jesse did in fact possess some information of exculpatory value. He knew the complainants' names, from both his own research and the prosecution's disclosure, and used this knowledge to correctly conclude which students in any given class were complainants and which were not. He was also aware that some complainants had re-enrolled in his father's classes after allegedly having been abused. He was well aware that none of the victims told anyone of the abuse until the police began to interview them. He also knew that one student, Witness 28, had been named a victim by other children, but had denied the abuse, and was willing to testify on his behalf. Further, he knew that some detectives, late in the investigation, engaged in questionable interviewing tactics. He knew that some witnesses had testified before two grand juries, describing the most severe abuse, or mentioning him for the first time, only in the third indictment. He also knew that Witness 26, Arnold's teenage assistant in the fall of 1987 class, when Jesse was away at college, was present when abuse was alleged, and could have been tapped as a defense witness. Despite all of this information, Jesse nonetheless chose to plead guilty.

After his plea and while incarcerated, Jesse appeared on *The Geraldo Rivera Show*, against his attorney's advice, and re-affirmed his guilt and discussed the abuse he and his father perpetrated on the children. Jesse recounted how his father "had made vicious threats to the kids about... burning down their homes... or hunt[ing] down their parents... if they told what was going on," threats that Jesse reinforced. He disclosed that Arnold had begun to molest him at a young age, but that he could not stop it because he was "scared" that if he tried to, he would "lose [his] father, who was the most important thing to [him] for most of his life." "For most of my life," Jesse said, Arnold "was the only person who ever loved me." Asked "[w]hy didn't the kids ever tell?" Jesse replied simply, "the same reason I never told." Jesse claimed, at his sentencing, that he was as much a victim as the children.

## **Additional Evidence Corroborates Jesse Friedman’s Guilt**

Moving beyond the Second Circuit’s concerns, the re-investigation also revealed further important information. Three additional victims alleged in sworn statements to the police in 1987 and 1988 that Jesse sodomized and sexually abused them. While those three never testified before any grand jury, it raises the total number of Jesse’s victims to sixteen.

The Review Team also analyzed notes of police interviews with children who never testified before the grand jury. Those notes revealed that some children said they felt uncomfortable in the class and that Arnold would hug, touch or otherwise let his hands linger over them. One child said that on one occasion Arnold taught the class with his shirt off. Another child said that Jesse took photographs of the class as the students worked. Other students said that they saw magazines with pictures of naked men. Several students were told that they were allowed to borrow pornographic videogames—such as Strip Poker—but were cautioned not to tell their parents about it. Several students described pornographic videogames that were given to them by Arnold Friedman. Others mentioned that Jesse would hit students.

One former student told the Review Team that, when helping a child with computer programming, Arnold would instruct the child to get up from his seat. Arnold would then sit down and tell the student to sit on his lap. The student told his mother, who promptly removed him from the class. Arnold later called to offer her a reduced rate if she would re-enroll her son. She declined. The same witness shared that one day in class, while using the bathroom, he “heard the door open behind [him] and saw a flash of light in the bathroom.” The witness saw Jesse standing outside the door and asked him if he had photographed him using the bathroom. Jesse denied it.

The Review Team also spoke to, or read accounts of, many victims’ parents. One father explained that he watched police interview his son in December 1987, and that as the police posed open-ended questions, the boy “erupted,” and described in explicit detail the sexual abuse he had suffered at the hands of Jesse Friedman. Many other parents affirmed that, in hindsight, their children did, in fact, exhibit signs of abuse. One student started defecating in his clothing. Another wet his bed. A third child lost his hair. There were reports of sleeplessness, nightmares, stuttering, a decline in school performance, separation anxiety and an overwhelming sense of fear. One parent found blood in her son’s underwear. One mother told the Review Team that she should have become suspicious when she attempted to enter the Friedman house to pick up her son and his friend but found the door locked. She was motioned by Jesse from the window to wait inside her car. When she questioned her son about what he was learning, he and his friend looked at each other sheepishly and giggled. None of these parents stated that they have any reason today to disbelieve that their sons were victims of the Friedmans.

Additionally, Arnold Friedman’s brother Howard Friedman spoke with the Review Team. Howard’s words were simple: “Jesse is guilty and you’re going to ask me how I know. Because Arnold told me.” Howard revealed that, in 1987, Arnold had tearfully confessed that both he and Jesse had “misbehaved” with children in the class.

Arnold also confessed to him that he sexually molested Jesse, a point later corroborated by Jesse himself on *The Geraldo Rivera* show. Arnold swore Howard to secrecy at the time of the confession, and made him promise to keep this confession secret until he died and Jesse was released from prison. After speaking with the Review Team, Howard felt that “a huge rock has been lifted from my chest.” Howard told the Review Team that he lied to the parole board and (initially) to the makers of *Capturing the Friedmans* to paint both his brother and his nephew in a better light.

### **Many Of The Victims Stand By Their Allegations Of Abuse**

The release of *Capturing the Friedmans* triggered public debate about whether Jesse Friedman was, in fact, innocent all along. For many complainants this was not a welcome conversation. Two former students—by then young men—sought counseling after the film’s release led them to feel traumatized anew. Others sought to protect their legal rights. In 2004, four students who had testified against Jesse retained attorney Sal Marinello to assist them in protecting their privacy should the case again threaten to draw them back into the public spotlight. Marinello would not identify his clients to the Review Team, but verified that at the time of his representation, each of his clients had described to him events consistent with their prior statements to police and prosecutors. This is consistent with Marinello’s few public statements on the case: as he has said, his clients “were sexually abused during periods of time and they also indicated the son was involved.” “They know what the truth is in this case. And when they see something as biased as this [movie] it has to affect them.”

Further, three of Jesse’s thirteen victims publicly reaffirmed their testimony in anonymous letters. In 2004, two victims wrote a letter to the Motion Picture Academy upon learning that *Capturing the Friedmans* was nominated for an Academy Award:

*We were abused, tortured and humiliated by Arnold and Jesse Friedman in computer classes in Arnold’s basement. Many of us have physical scars from what was done to us: all of us have psychological scars.*

During this time, another victim, a law student, wrote the following to Judge Boklan:

*It was under the guise of an educator, that Arnold and Jessie Friedman used computer technology to show young children pornography, to take photographs of young children reacting to that pornography, and to take photographs of sexual acts being performed by young children. I was seven years old when I was in the custody of Arnold and Jessie Friedman. At that time I did not understand the dynamics of human sexuality. I only understood fear. I became afraid of everything beyond my control. My childhood curiosity was replaced with an inherent distrust for adults, authority figures, and every unknown.*

In addition to these historical affirmations, three other victims, Witnesses 11, 13, and 2, came forward during this re-investigation to re-affirm the abuse they suffered at the hands of Arnold and Jesse Friedman. In addition, another former student, Witness 18, who never testified in the grand jury and who had previously disclosed abuse only against Arnold, shared his story of the abuse he suffered at Jesse's hands as well. Each former student described how the acts perpetrated upon them by the Friedmans had long lasting effects.

Witness 11, now a successful professional, not featured in the movie *Capturing the Friedmans*, told the Review Team that he remembers hiding his clothes after class because "there was stuff on [them]." He remembered being sodomized and he also recalled playing a penis measuring game and a sexualized version of "Leap Frog." According to him, sexual abuse often happened to the side of the class, but all students were aware of what was happening. He explained how until recently he was afraid to leave his own children in the care of a non-family member. Another former student, Witness 18, expressed to the Review Team that he felt "re-victimized" and almost collapsed when he heard that the case would be re-investigated.

Witness 13, also not featured in *Capturing the Friedmans*, suffers from a psychiatric condition, which his treating psychiatrist ascribes to the abuse he suffered at the Friedmans' hands. Witness 13 emotionally and angrily recounted to the Review Team how Jesse and Arnold sodomized and sexually abused him during the computer classes. His treating psychiatrist, a family friend who began treating him eight years ago, knew him while he was attending the Friedman class, and witnessed firsthand his change from a normal but quiet five-year-old into a "drifty," troubled seven-to-nine-year old boy who suffered from bouts of spontaneous diarrhea in the years during the Friedman class. A third victim, Witness 2, who appeared in *Capturing the Friedmans*, also spoke to the Review Team and confirmed the abuse he suffered.

### **Proffered Recantation Evidence Is Either Mischaracterized, Misrepresented, Or Unreliable**

Jesse Friedman's advocates, including the filmmaking team responsible for *Capturing the Friedmans*, argue that four of Jesse Friedman's accusers have recanted to them on film. That claim is simply not accurate. While Jesse's advocates have refused to provide the Review Team with all of the information needed to fully assess these claims, the Review Team's investigation has shown that three of the four alleged recantations are not recantations at all. Instead, they are excerpts of larger interviews that, when read in full, demonstrate that the former students have not completely disavowed their original allegations.

The fourth alleged recanter, Witness 14, was contacted in 2012 over the telephone by the filmmaker and questioned about his involvement in the Friedman case. He specifically denied that he was a victim. In fact, Witness 14 went on to say, "As God is my witness, and on my two children's lives, I was never raped or sodomized." This stands in marked contrast to his November 1987 sworn statement to the police where he recounted that Arnold sodomized him and that he touched Jesse's penis. But, Witness 14

contacted the Review Team after speaking to the filmmaker. Significantly, and in contrast to how Witness 14's statements have been publicly portrayed, this witness stressed that he did not remember anything from the Friedman classes, and went on to say that others were abused. In other recent statements to both the filmmakers and the Review Team, he has said that "stuff really did happen" and that pornography may have been present in the classroom. When the Review Team reminded him of his prior statements, he said, "my heart is pounding." He went on to tell the Review Team that he had no specific memory of being abused, but that he was not saying it did not happen. He also balked at participating in an attempt to exonerate Jesse. He was extremely careful to guard his privacy especially in light of the fact that he has never told his wife or children of his involvement in the case.

Jesse Friedman's attorney, Ronald Kuby, also informed the Review Team and Advisory Panel that another former victim of the Friedmans had recanted. To support his claim, Kuby forwarded a letter from Witness 10. That witness was prompted to write to the Review Team after receiving a package from Kuby marked "legal mail" at his place of business. The package was opened by his mailroom, and shown to his superiors, who then researched the Friedman case and confronted him about it.

He then contacted Kuby to discuss his involvement in the Friedman case and insist on his privacy. At Kuby's request, Witness 10 wrote a letter to the Review Team, which he asked Kuby to forward. In his letter, he stated that he was untruthful in his original statements to the police, and that he was not sexually molested by the Friedmans. He stated that he believes that he gave those accounts because of repeated police questioning.

Witness 10 refused to be interviewed by the Review Team, even to verify that he had written the letter. The circumstances surrounding Witness 10's "recantation" are suspect. The Review Team mailed two certified letters, one in 2011 and again in 2012, to Witness 10's home, informing him of the re-investigation and requesting that he contact the Review Team to discuss the case. He never responded. Only when he was placed in an embarrassing situation at work did he offer his recantation. Against this backdrop and given his refusal to speak with anyone involved in this case outside of Jesse's attorney, the Review Team cannot credit the statements recently attributed to this individual.

Nor is the Review Team persuaded by the recent statement of one other witness, Witness 25, who never actually testified in the original case. During the original investigation, Witness 25 denied to the police that he was abused. Only after Jesse Friedman pled guilty and was sentenced did he reveal to both his mother and his therapist, separately, that he was in fact abused. Witness 25 originally spoke to the Review Team in 2011 and stated that he was never abused and never witnessed abuse, despite being a member of a class where abuse was alleged to have taken place in plain sight. He described facing immense pressure from his mother and his therapist to admit that he had been victimized by the Friedmans. He believed that admitting that he had been abused was the only way to bring an end to therapy. At the time, the Review Team asked permission to speak to his mother about his experience in therapy, and in response, Witness 25 admitted that he had never told his mother that he had lied. Two years later,



Witness 25 confessed to his mother that he had never been abused. Because Witness 25 was not a complainant in this case, his recantation does not directly affect Jesse's guilty plea. Balanced against the other evidence the Review Team uncovered, Witness 25's statements are insufficient to disturb the conviction.

### **Other Arguments Do Not Indicate A Wrongful Conviction**

Jesse and his advocates argue that many students in classes where abuse was alleged to have occurred in the open said that they never saw anything of the sort. One significant problem with that argument is that it presupposes that these students were in the same session, in the same class, on the same day that abuse was alleged. The fundamental difficulty in recreating class rosters is that witnesses' memories of their classmates, when pieced together, do not yield a consistent picture. Arnold Friedman did not keep records of his class membership or of attendance, both of which are necessary for a complete record. Moreover, it is clear that make-up sessions were given due to absences, and, as such, some students may not have been present when abuse is alleged to have occurred.

Some complaining witnesses referenced their classmates as victims of sexual abuse. Some of those children either denied abuse or were silent. This raises some concern, but the Review Team cannot assume that a child's failure to disclose abuse necessarily means that he was not abused. There are a host of reasons why a child may choose not to disclose abuse or even deny abuse—fear, guilt, and shame may certainly be significant factors. For example, the son of a close family friend of the Friedmans was molested by Arnold many years before these events occurred. He did not disclose Arnold's molestation of him as a child until fifteen years had passed, and only then, after Arnold was arrested in this case. Arnold thereafter admitted to his own family that he had in fact molested this boy. These matters are both delicate and complex and no conclusion can or should be drawn by a child's denial or silence.

### **Ross Goldstein's and Jesse Friedman's Accounts**

The exculpatory accounts put forward by Jesse Friedman himself, and his codefendant Ross Goldstein, are not reliable. As to Ross Goldstein, though he now claims he never committed the crimes of which he was accused, this recantation comes twenty-four years after his own guilty plea, and two years after he repeatedly declined to be interviewed by the Review Team. Goldstein's 2013 claim that he, too, had been pressured into falsely implicating himself and Jesse Friedman is simply not credible. Further, the Review Team interviewed a close friend of his, who confirmed that in 1988 Goldstein had privately confessed that during a night of heavy drug use, Jesse had "seduced" him and performed oral sex on him, and that Jesse claimed to have a video recording of the act. Goldstein told his friend that Jesse blackmailed him into photographing the Friedman class, threatening to show the video to Goldstein's girlfriend, friends, and parents.

Goldstein's belated recantation also conflicts with the description of his involvement in the case that he gave to the producers of *Capturing the Friedmans*. In a conversation with film producer Marc Smerling, subsequently transcribed and obtained

by the Review Team, Goldstein responded to the producer's claim that he had "found quite a bit of exonerating stuff":

*That is total... that is something that I would definitely care to share as something completely untrue...that's why I honestly feel partly that me getting involved in the film is not good... will not help [Jesse].*

At the time, Goldstein disagreed with Smerling's perspective, and stressed instead that, if he were to cooperate with the film, his story would be a "grey area" that was not "either gonna exonerate him [Jesse] all the way or make the police look bad all the way." In any event, Goldstein's contribution to this case was limited to the third indictment.

Jesse Friedman's account of his and his father's innocence is similarly suspect. That Arnold Friedman was a pedophile who showed pictures of naked men to children while holding them, petting them, or fondling them, and rewarding them with pornographic computer discs, is beyond doubt. That Jesse Friedman was a troubled, angry young man, unable to tell right from wrong, has also been documented. It is against this backdrop that this case evolved. Jesse Friedman admitted once to a judge, under oath, and then again to a national television audience, that his father abused him, victimized him, and turned him into an abuser of young boys. Today, Jesse disavows those statements, and maintains his innocence, and that of his father. Even Jesse Friedman's picture of himself is contradictory. At once he claims the naiveté of a young man struggling in a legal system he did not understand. Simultaneously, he describes how he cleverly and purposefully disseminated false information to garner sympathy. In the end, these and other contradictory statements leave no version entirely worthy of belief.

## **Conclusion**

The Review Team acknowledges the difficulty of relying on a witness's ability to accurately recall events that transpired twenty-five years earlier. Memory is fluid and can be affected by the telling and re-telling of the event. It is subjective. It is often shaped by a person's life experiences and may be distorted. Additionally, a person's decision to participate in this review, or to absent himself from it, may be motivated by a variety of reasons. In this context, statements obtained during this investigation were analyzed and examined. Where support for the statements was found, it was documented. Where inconsistencies existed, they were noted. Guided by common sense, the Review Team's collective work experience, and the Advisory Panel, the information was evaluated. Efforts to recreate what transpired in 1987-88 were hampered by the passage of time, fading memories, reconstructed personal histories, and the natural tendency toward self-preservation. Rather than rest solely on recent witness statements, the Review Team also looked to objective material, such as the overall structure of the case, including its rapid early progression, contemporaneous reports of the case in media, police, and defense documents, and, of course, statements made by witnesses and by parents as the original investigation progressed. The result is a comprehensive report that draws from all available sources.

The Review Team committed itself to follow the facts wherever they might lead, and found that the whole truth diverged significantly from the edited version of events portrayed in the film. In the final analysis, the integrity of Jesse Friedman's conviction has not been undermined by allegations of an overzealous investigation and prosecution, or by any new information. After a three-year investigation of the facts and circumstances surrounding Jesse Friedman's guilty plea, the District Attorney concludes that Jesse Friedman was not wrongfully convicted.

## **Conviction Integrity Review: *People v. Jesse Friedman***

In August 2010, Nassau County District Attorney Kathleen M. Rice announced that her office would undertake a formal review of the 1988 conviction of Jesse Friedman for crimes involving child sexual abuse and sodomy. Rice’s decision, and the subsequent re-investigation, were prompted by the United States Court of Appeals for the Second Circuit, which, in denying Jesse Friedman’s petition for a writ of habeas corpus, stated that there existed a “reasonable likelihood” that Jesse Friedman stood wrongfully convicted of the crimes to which he pled guilty more than two decades earlier.<sup>1</sup>

Rice assigned three senior prosecutors—none of whom had served in the prior administration—to lead the investigation (the “Review Team”). Rice also reached outside the office and appointed four independent experts (the “Advisory Panel”) capable of guiding the investigation. This report is the culmination of the nearly three-year investigation that followed, and builds on information and statements obtained from witnesses, investigative files, interview transcripts, film footage, audio and videotapes, personal correspondence, and once-confidential legal and medical reports.

### **I. The Investigation And Prosecution Of Arnold And Jesse Friedman**

To the extent possible, the section below reconstructs the events that led to Jesse Friedman’s guilty plea, beginning with a background on the Friedman family and a chronology of relevant events. This section primarily reflects conclusions drawn from a review of the case file. It has, where relevant, been updated with information learned from interviews conducted by the Review Team.<sup>2</sup>

#### **A. The Friedman Family**

In the autumn of 1987, Arnold Friedman lived with his wife, Elaine, at 17 Piccadilly Road in Great Neck, New York, a village on the North Shore of Long Island. As described in interviews, Great Neck was and remains an exclusive, socially competitive neighborhood, inhabited by mostly affluent and well-educated families.

Arnold and Elaine<sup>3</sup> had three adult children, none of whom lived at home at that time. David Friedman, the couple’s oldest son, was an aspiring children’s performer, two years away from pioneering a clown act that would both make him famous and later draw the attention of filmmakers Andrew Jarecki and Marc Smerling.<sup>4</sup> Seth, the Friedman’s middle child, declined to participate in both the popular film about the case, *Capturing*

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<sup>1</sup> *Friedman v. Rehal*, 618 F.3d 142, 159-160 (2d Cir. 2010). The decision is attached at page A001.

<sup>2</sup> Throughout this report, primary source documents included in the Appendix are cited by the letter “A,” followed by a page number. For example, “A001” refers to the first page of the Appendix. Some documents are omitted from the public appendix for brevity and confidentiality.

<sup>3</sup> For the sake of convenience, members of the Friedman family are often referred to by their first names. This editorial decision is not intended to convey any disrespect.

<sup>4</sup> See Susan Orlean, *Seriously Silly*, THE NEW YORKER, Jan. 31, 1994, at 42-43.

*the Friedmans*,<sup>5</sup> and this investigation.<sup>6</sup> The Friedmans' youngest child, Jesse, was then eighteen years old, and a first-year student at the State University of New York, Purchase College.

The Friedman family extensively documented their lives through photographs, audiotapes, and film. In interviews with the Review Team, witnesses described Arnold as a workaholic who avoided spending time with his family, and suggested that his relationship with Elaine was substantially devoid of any real affection. The couple sought marital counseling around 1987, but Arnold Friedman ultimately declined to continue therapy. Recent interviews, letters, and audiovisual material outline significant tensions pitting the two older boys, David and Seth, against their mother.

Jesse himself was depressed as a child and, by at least one report, was diagnosed as manic depressive.<sup>7</sup> As a child he was prone to fits of anger, and may have suffered from a learning disability that went undiagnosed until the ninth grade. When he was still young, he would skip classes and simply not go to school. Jesse eventually completed his secondary education at a Great Neck alternative high school, the Village School. While in high school, according to some sources, Jesse used drugs heavily, including marijuana and LSD. He had several girlfriends, enjoyed music, was socially active, and remained very close to his brothers. After graduating second in his class from the Village School in 1987, he enrolled at the State University of New York, Purchase College, one hour's drive away from his Great Neck home. Jesse was away at college during the final session of his father's computer class, in 1987.

## **B. Arnold Friedman's Computer Classes**

At the time of his arrest, some knew Arnold Friedman as a friendly, highly intelligent, and award-winning local schoolteacher, who inspired loyalty and great affection from his students.<sup>8</sup> Others described him as a quiet, bookish man.

Upon his retirement in 1982, Arnold Friedman began offering private piano lessons and computer classes to area children.<sup>9</sup> Jesse joined him as an assistant in the computer classes in 1984, and remained in this position until he left for college in 1987.<sup>10</sup>

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<sup>5</sup> Produced by Andrew Jarecki and his business partner Marc Smerling, *Capturing the Friedmans* follows the criminal prosecution of Arnold and Jesse Friedman, and the effects of that case on the Friedman family. See generally *Capturing the Friedmans* (Magnolia Pictures 2003). In the years following the release of the film, advocates for Jesse Friedman have argued that excerpts of interviews compiled for the film actually prove Jesse Friedman's innocence. This report examines the relationship between the film and the legal case in depth.

<sup>6</sup> According to Jesse, he has not spoken with Seth for more than ten years.

<sup>7</sup> See A905-16, Alvin E. Bessent, *The Secret Life of Arnold Friedman*, *NEWSDAY*, May 28, 1989.

<sup>8</sup> *Id.*

<sup>9</sup> *Friedman*, 618 F.3d at 146.

<sup>10</sup> *Id.*

Arnold then hired a second assistant, Witness 26,<sup>11</sup> discussed *infra*. The computer classes ostensibly entailed simple programming lessons and either began or ended with an opportunity for the children to select and play videogames. These games were stored on disks in the class disk library.

Students ranged in ages from seven to thirteen years old, and came from all four local elementary, as well as two nearby middle schools. As a result, some students did not know all of their classmates, or even their names. Several parents who were recently interviewed described membership in Arnold's classes as something of a status symbol. Due to the small size of the classes, placement appeared competitive, with spots presumably going only to those with the talent to succeed. Some children had no interest in computers, but were pressured to attend by their parents, who believed that their children would learn a valuable skill.

### 1. Classroom Organization

All classes were conducted in the main room on the ground floor of the Friedmans' house, which alternately served as a computer classroom and as a small day care center run by Elaine.<sup>12</sup> Each session typically lasted an hour and a half. Parents were free to observe, but there are few documented accounts in which a parent actually entered the classroom, and those instances appear limited to the beginning or the end of class.<sup>13</sup> The room was not visible from the street, or from much of the house, including the front door, and the door to the classroom was kept closed during some class sessions. The only door from the classroom to the outside world opened to the backyard and had retractable bamboo shades attached.<sup>14</sup>

To pick up their children, parents were asked to wait in their cars outside the Friedmans' house.<sup>15</sup> As part of his class responsibilities, Jesse Friedman, standing just inside the front door, would monitor the arrival of the parents' cars, and alert students when their parents arrived.<sup>16</sup> Arnold Friedman outlined these procedures in a letter to each parent, in which he explained that parents should wait inside their vehicles to relieve

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<sup>11</sup> This report uses numbers to identify confidential witnesses. The numbers are unique, and bear no relation to any previous identification rubric, such as those used in the original indictments. Throughout this report, the term "complainants" refers to the seventeen children who testified in any of three grand jury presentations against either Arnold or Jesse Friedman, or both.

<sup>12</sup> For a leaflet advertising her service, see A411.

<sup>13</sup> A recent "white paper" produced by the National Center for Reason and Justice, and written by several of Jesse Friedman's advocates, asserts that parents were likely to drop in at any moment. See, e.g., Gavin de Becker & Emily Horowitz, *Destruction of Innocence: The Friedman Case: How Coerced Testimony & Confessions Harm Children, Families & Communities for Decades after the Wrongful Convictions Occur*, at 6 (Mar. 4, 2013), available at <http://ncrj.org/ncrj-white-paper-on-the-jesse-friedman-case>.

<sup>14</sup> The same "white paper" contains a diagram of the classroom that depicts a glass sliding door as one exit from the classroom. See *id.* at 7. Assuming the door was used as depicted—unobstructed and open—it did not face the front of the house, and was not visible to anyone approaching the house from the street.

<sup>15</sup> Alvin Bessent's 1989 *Newsday* article on the case reported that parents rarely entered the Friedman home, and this was by design. See A908-09. Several witnesses told the Review Team the same thing.

<sup>16</sup> See A450, letter from Jesse Friedman to David Friedman, re: "True Confessions" (undated).

congestion on Piccadilly Road.<sup>17</sup> The parents of one complainant recalled that they were specifically forbidden from entering the classroom: the house's front door was locked, and this complainant's mother had to knock, and wait in her car, to pick up her son. At least one witness told his mother that, for whatever reason, he did not like waiting for his parents with Jesse Friedman.

## 2. Sessions and Class Membership

All classes were small, containing approximately nine children, and took place in three discrete "sessions"—fall, winter, and spring<sup>18</sup>—throughout the school year. Each session involved several classes, which met on different days of the week. At different times, Arnold and Jesse Friedman would each host make-up sessions for individuals or groups of students, suggesting that students would occasionally miss class for holidays, family vacations, illness, or other reasons. If Arnold Friedman kept a complete roster of every computer class he taught, it was not recovered or not retained by police; similarly, he did not keep attendance records.

Arnold exercised complete control over class membership. He recommended students for "advancement" to the next level and, in some cases, removed them from a class. One mother explained to the Review Team that Arnold asked her to remove her younger son, citing disciplinary problems, and then her daughter, because Arnold believed that she was not able to grasp the material. The composition of each class was designed specifically by Arnold.

## C. **Arnold Friedman's Abusive History**

Arnold Friedman was a pedophile. Arnold's own admission to this fact is documented in a personal narrative he wrote while in prison, titled "My Story." There, he claimed that the disintegration of his parents' marriage required him to seek out other sources of affection, a need that ultimately manifested in the ongoing sexual abuse of his younger brother, Howard Friedman, and of other boys Howard's age.<sup>19</sup> As Arnold matured, he wrote, he still could not shake a need to relive those first experiences with young boys.<sup>20</sup> Arnold's account went on to justify his interest in child pornography as an outlet for his sexual urges, one that he believed would prevent him from actually attempting to touch a child sexually.<sup>21</sup> He also claimed that his psychiatrist sanctioned collecting child pornography on that basis.<sup>22</sup>

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<sup>17</sup> This document was described to the Review Team by Arline Epstein, a mother whose child was enrolled in Arnold Friedman's classes, and who was interviewed by the Review Team in 2013. Elaine acknowledged the problem caused by traffic on the street, as did Jesse in his post-conviction affidavit. Affidavit of Jesse Friedman in Support of Motion to Vacate Conviction (Jan. 5, 2005), at ¶ 7.

<sup>18</sup> Some years also included smaller summer classes.

<sup>19</sup> See A538-41.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> A539.

In one instance, outside the scope of the original investigation, Arnold Friedman admitted that he sexually abused at least two young boys while vacationing at the family's second home in Wading River, New York. One was the child of a close family friend, who did not tell his parents that he was abused until after Arnold's arrest, fifteen years after the abuse. Arnold would later claim that that child actually "seduced" him.<sup>23</sup> (See excerpt, below.)

Dear David: F. F. 1039

I want to comment on some of the things that you discussed with your mother Tues. night.

As I told you, I wrote her many times over the past 1½ years, in which I told her that I fully accepted my role and "blame" for this, in having had the pornography, and that I entertained a sometimes fantasy in this regard. This is ALL IT WAS. Yes, I did have some acting out experiences 20 years ago. Essentially, I simply gave these boys a little affection, which they craved. I evidently never having received any from their parents. I cannot imagine or [redacted] being affectionate parents to their kids. But, so easy for [redacted] to take the guilt she harbors for her role in fucking up her son's life—and put that blame on me. As though that one, brief episode (in which he really seduced me) could have caused all the problems in his life. But, [redacted] I was handy.

But, equally damaging to me is what [redacted] bullshitted your mother with—that I must have abused my own boys, that I must have been fantasizing about boys when I had sex with my wife, that thinking about this is tantamount to doing it—ALL LIES—NONE of this is true—but your mother bought it completely. She believes [redacted] more than she believes her own husband and sons. Well, she was always influenced by [redacted] and your mother worshipped the ground that [redacted] walked on. Your mother never did think for herself.

In the "close out" interview conducted after his guilty plea, discussed at Section I.G, *infra*, Arnold also admitted to other acts committed outside of his computer class, such as fondling the buttocks of one of his piano students. This report is corroborated elsewhere: in a letter to David Friedman, Jesse himself notes that one piano student had complained that Arnold made "passes" at him.<sup>24</sup>

Arnold also admitted that he collected child pornography. By his own account, his interest intensified in response to the "burden" of raising children.<sup>25</sup> His growing collection of pornography was, according to some documents, well known to his sons, who each independently discovered his cache of pictures. According to Jesse, before 1987, the Friedman children discussed the discovery among themselves only once,<sup>26</sup> though, according to a later letter, David and Jesse Friedman both understood "how scared [Arnold] was of 'being found out.'"<sup>27</sup>

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<sup>23</sup> A484, letter from Arnold Friedman to David Friedman (May 1\_, 1989) ("As though that one, brief episode (in which [the victim] really seduced me) could have caused all the problems in his life.").

<sup>24</sup> See A452.

<sup>25</sup> See A539.

<sup>26</sup> See A912, at 8 (recounting Jesse's early discovery of the pictures).

<sup>27</sup> A453.



As a child, Jesse Friedman said, he even brought some of his father's child pornography with him to school. The material was confiscated, and Jesse says today that he is unaware of any follow-up by the school to his parents, or to the authorities.<sup>28</sup> The presence of child pornography was also known to other adults at the time. In a recent statement, Jesse's codefendant, Ross Goldstein,<sup>29</sup> recalled that Jesse Friedman once showed him a magazine containing child pornography, which Jesse had told him belonged to Arnold Friedman.

#### **D. Federal Agents Arrest Arnold Friedman for Trading in Child Pornography**

In July 1984, federal postal inspectors intercepted a pornographic magazine addressed to Arnold Friedman at his Great Neck home. They launched an investigation that entailed three years of covert correspondence with him to determine the extent of his illegal activity. In letters to an undercover agent playing the part of a pedophile named "Stan," Friedman offered to, and later did, transmit pornographic material through the United States mail. In one such letter, dated January 9, 1986, Arnold described a book, "Joe (14) and His Uncle," as "rather precious." He later sent it to "Stan" with the caption, "Enjoy!" In October of that year, "Stan" mailed Arnold an offer to join an underground club that traded in child pornography. The offer included a questionnaire asking Arnold to explain what types of pornography he preferred. Arnold responded, and on the questionnaire indicated that he preferred "homemade" child pornography.<sup>30</sup>

This investigation concluded when Arnold Friedman took delivery of a pornographic magazine from the undercover agent. That same day, on November 3, 1987, agents executed a search warrant on the Friedman house. As a courtesy to local law enforcement, federal agents invited Nassau County investigators to participate in the execution of the federal warrant.<sup>31</sup> The search resulted in the discovery of the previously-delivered magazine, advertisements for the purchase of additional magazines, and thirty-one books, magazines, and leaflets of commercialized child pornography found loosely behind the piano in Arnold's office.<sup>32</sup> Examples of magazine titles recovered included:

- Jail Bait

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<sup>28</sup> Jesse Friedman related this incident to the Review Team during a 2011 interview.

<sup>29</sup> The Review Team was mindful of the fact that Ross Goldstein is not the subject of this report and was afforded Youthful Offender Treatment for conduct he engaged in at the Friedman house. However, in light of the fact that his identity has been widely reported in the media, court documents, a published court opinion, and he has permitted the Review Team to use his name in this report, it appears here where its inclusion was deemed absolutely necessary to avoid distorting critical facts and events, or to provide clarity or context. Where possible, however, efforts have been taken to minimize disclosure of specific unlawful acts attributed to him.

<sup>30</sup> See Affidavit of John E. McDermott (Nov. 3, 1987), at ¶ 13.

<sup>31</sup> See Affidavit of William Hatch (Nov. 24, 1987), at 1.

<sup>32</sup> One of the original investigators, Nassau County Detective Hatch, lists the number of magazines discovered as near twenty. See *id.* But the federal search warrant return names twenty-six magazines, five books, and an additional unnumbered cache of "misc." child pornography. See A271-76.

- Young Boys & Fellatio
- Todd's First Time
- Young Boys & Sodomy
- Incest Case Histories
- Sexual Experience Between Men & Boys<sup>33</sup>

The search warrant also uncovered a list of some of the students in Arnold's computer classes. Thereafter, Arnold Friedman was indicted in federal court on three counts involving his use of the United States mail to transmit child pornography. He retained Jerry Bernstein, a former Assistant U.S. Attorney, to represent him. At this point, the federal case against Arnold Friedman diverged from the state case, which would begin to develop.

#### **E. The Nassau County Investigation's First Phase (Pre-State Search Warrant: November 3-25, 1987)**

The discovery that a pedophile was instructing children in small classes prompted an investigation into whether Arnold Friedman had ever acted on his urges by abusing the children entrusted to his care.<sup>34</sup> The Nassau County Police Department proceeded to interview children who attended the classes to determine whether Arnold had inappropriate contact with any of his students. Detective Sergeant Frances Galasso of the Sex Crimes Squad was tasked with leading the investigation, which was initially staffed only by herself and two other detectives.

The state investigation of the Friedmans can be broken into three distinct phases. The first phase covered the time between the investigation's start and the execution of the state search warrant on November 25, 1987. The second phase ran from November 25, 1987 to December 17, 1987. By the end of this second period, police had conducted all interviews necessary to sustain the first and second indictments. The third phase extended from December 18, 1987, until the case concluded approximately a year later, with Jesse Friedman's sentencing on January 24, 1989.

##### **1. The NCPD's Investigative Team and Procedures**

As detailed below, the investigation quickly uncovered evidence of criminal activity, requiring Detective Sergeant Galasso to expand her team of detectives. Ultimately, her team included at least nine Nassau County detectives: Detectives Patricia Brimlow, Lloyd Doppman, William Hatch, Wallene Jones, Anthony Fiore, Nancy Myers,

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<sup>33</sup> *See id.*

<sup>34</sup> The conclusion that someone who purchases child pornography may also engage in child sexual abuse is both logical and legally supportable. Numerous courts, and the United States Congress, have concluded that child pornography is often used by pedophiles either as a tool in the seduction process, to induce children into believing that sexual activity is normal, or to whet a pedophile's appetite for the ultimate, criminal act of sexual abuse. *See, e.g., United States v. Poitra*, 648 F.3d 884, 891-92 (8th Cir. 2011) (surveying authorities).

Larry Merriweather, Peter Reihing, and Anthony Squeglia. Officers Charles Whiddon and Mary Ann Durkin were also assigned to the investigation. Several of these investigators were selected from the Juvenile Aid Bureau based on their training and experience interviewing child witnesses. Detective Sergeant Galasso chose officers with stable home lives, on the theory that they would better understand children and be equipped to endure an emotionally draining interview process. She also preferred detectives to work in pairs, and for the tandem to include one detective who had experience investigating sex crimes, and one who did not. Detective Sergeant Galasso felt that this would ensure that the case benefited from varied investigative experiences. Detective Sergeant Galasso divided Great Neck into grids, handing out assignments systematically on that basis.<sup>35</sup> Detectives worked collaboratively and shared developments. Early in the investigation, a draft list of probative questions was also compiled, which some but not all detectives remember consulting.<sup>36</sup>

During meetings with prospective witnesses, detectives recorded most reports of criminal conduct by reducing them to handwritten formal statements, prepared and signed contemporaneously by the detective who took the interview. Each statement was also signed by the child himself and, in all but two cases, by the child's parent.<sup>37</sup> Editing marks and initialed changes indicate that statements were read back to the child, who was then given a chance to correct any misstatement. Statements were not intended to be verbatim records of the child's words. While this report excerpts only those elements of statements that disclosed criminal conduct, all statements provided substantial background information and often went into great detail. The average statement was handwritten, and filled at least five pages of single-spaced, 8½ by 11 inch paper. Some statements ran to as much as thirteen pages.<sup>38</sup>

Unless otherwise stated, within the chronology below, each reference to a "statement" identifies a statement written by a detective and signed by a witness and, on most occasions, their parents. Detectives also conducted other types of interviews. Some children signed statements indicating that they had participated in an identification procedure, such as, the viewing of a yearbook, a photographic array, or a lineup. Other children completed a checklist to indicate which pornographic videogames, if any, they had seen during the class. Where these appear in this document, they are distinguished from the substantive statements described above. Other interviews were memorialized only by handwritten notes from detectives.

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<sup>35</sup> The above information is drawn largely from a re-investigation interview with Detective Sergeant Galasso, and corroborated by interviews with other participating detectives.

<sup>36</sup> See A285-89. The significance of this document is discussed on page I.E.1, *infra*.

<sup>37</sup> The Review Team's record contains forty-eight signed statements. Only two substantive statements are not countersigned by either of the witness's parents.

<sup>38</sup> The preceding is drawn from an internal review of witness statements. Because such statements necessarily disclose victim identities, and relate to the commission of a sex crime, they are confidential and may not be disclosed. See Section II.C.1, *infra*. Accordingly, this report's Appendix does not include any of these statements. To save space, where information discussed here is drawn from these statements, no citation is made.

Inculpatory statements did not automatically translate into indictment counts. Instead, before presenting evidence to the grand jury, the lead prosecutor, Assistant District Attorney (“A.D.A.”) Joseph Onorato, personally re-interviewed each witness so that he could make his own, independent judgment of the witness’s credibility. According to A.D.A. Onorato, and as discussed in a police newsletter, years prior to this case, he had earned a reputation for refusing to take the results of police investigations at face value.<sup>39</sup> In this case, A.D.A. Onorato personally passed on the credibility of each potential witness. He would explain to the children that it was important to be truthful, and that the child could decline to testify. At the grand jury presentment, jurors were able to question witnesses directly. Only once did a child present his testimony by videotape.<sup>40</sup>

## 2. Interview Breakdown, and the Significance of “Negative” Reports

By the end of the investigation, the police documented visits to a minimum of 104 households. From these households, detectives identified sixty-nine children who had attended the Friedman classes. Though only fourteen students would eventually testify against Jesse Friedman before any grand jury, at least **twenty-five** of these sixty-nine children reported criminal activity by one or both Friedmans.<sup>41</sup> Seventeen of those twenty-five implicated Jesse Friedman. This includes three non-testifying victims who, though they did not testify before the grand jury, signed formal statements on December 4 and 10, 1987, and May 26 and June 15, 1988. All four statements included allegations of sodomy and sexual abuse involving Jesse Friedman; it is not known why they did not testify.<sup>42</sup> Based on information obtained during the course of the re-investigation, police did not contact every household that sent students to Arnold Friedman’s classes. Contemporaneous media and law enforcement claims that there may have been as many as 500 victims were substantially overstated.

Though the police took many statements, police record-keeping was extremely inconsistent. Some officers made an effort to document their interactions with prospective witnesses, but others did not. Nor can that information be reconstructed from detectives’ memories, which have faded in the intervening twenty-five years. In some cases, where an interview did not produce any inculpatory account, police documented the interview with a handwritten note listing the interviewee’s name, characterizing the interview as “negative,” and, sometimes, explaining that designation.

Investigators recorded these “negative” reports for a variety of reasons. In some cases, the “negative” report indicated that, at the house visited, the parents had attended

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<sup>39</sup> The newsletter describes a case in which Onorato reported an NCPD officer to the Official Corruption Bureau for an incident involving an allegedly wrongful arrest. *See* A299-300 (undated).

<sup>40</sup> This practice is permitted in New York state in special cases. *See* N.Y. C.P.L. § 190.32.

<sup>41</sup> “Criminal activity,” here, includes sexual acts, or conduct that would constitute the crime of Endangering the Welfare of a Child, such as, showing pornographic images to children.

<sup>42</sup> As children, of course, the decision was not theirs alone to make. Parents could reasonably fear for their child’s well-being if they were to become involved in a case that could, ultimately, proceed to a traumatic and long trial. No inference, positive or negative, should be drawn from a decision not to testify.

Arnold Friedman's adult education class, but the children had not attended any classes. Other negative reports meant that a child had attended Arnold Friedman's class, but only briefly, or that he was enrolled, but never attended. Other reports represented a home where no one had any contact at all with the Friedmans.

In fact, during one interview described as "negative," a child nevertheless told police about alarming behavior: he said that Arnold and Jesse Friedman would "come out of room with a different boy about every 10 min—arm around boys," that someone "took games home," that there was a "Mag with naked men," and that "Boys and Fried spend time & laugh ignore [REDACTED]." In this, and in other interview notes, children described behavior that was non-criminal but consistent with "grooming,"<sup>43</sup> or that corroborated other witness statements. Examples include:

- Some said they felt uncomfortable in class, and saw Arnold Friedman hug, touch, or otherwise linger with his students.
- [REDACTED] said, on November 16, 1987, that Arnold Friedman taught the class with his shirt off. This student quit the class due to what he described as an aggressive relationship between Arnold and Jesse Friedman.
- On November 18, 1987, [REDACTED] reported seeing Jesse Friedman take pictures of the class as students worked.
- A student described seeing a magazine with naked pictures of men in the classroom.
- On December 2, 1987, [REDACTED] said that Jesse Friedman would pick up children by the waist.
- Several students were told that they were allowed to borrow pornographic videogames—such as "Strip Poker"—but cautioned not to tell their parents about it.
- Still others talked about Jesse Friedman walking around the class with a camera, and hitting students.

Accordingly, it cannot be said that every child who was visited, but did not give a statement, was one who attended the Friedman class and saw nothing out of place.<sup>44</sup> Nevertheless, for many students, the Friedman computer classes were nothing more than what they were advertised to be.

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<sup>43</sup> "Grooming" is a term used by law enforcement officials, child safety advocates, and others, to describe common techniques used by pedophiles to sexualize a child, and pervert an initially blameless relationship into an opportunity for child sexual abuse. *See, e.g., United States v. Brand*, 467 F.3d 179, 203 (2d Cir. 2006) (describing "grooming" in the context of federal statutes that criminalize "grooming" behavior). Here, the term "grooming" carries that meaning, with specific emphasis on the use of pornographic images, games, and other inducements to condition a child into believing that sexual behavior with adults is normal.

<sup>44</sup> In his "white paper," for example, Gavin de Becker states that "[o]f the 480 students who police said were in classes with Jesse Friedman and likely molested, inexplicably only 14 were ever put forth as complainants in the case." *See De Becker & Horowitz, supra* note 13, at 4. But those numbers are very far off-target. A more accurate ratio would state, as above, that twenty-five of sixty-nine children who at one time took a class with Arnold Friedman reported *criminal acts* by the Friedmans, and still more reported inappropriate behavior.

### 3. Initial Media Coverage

The first news article to report on the Friedman case appeared in *Newsday* on November 13, 1987,<sup>45</sup> ten days after the federal search warrant was executed. A week later, though, a local newspaper, the *Great Neck Record*, published a laudatory article noting that Arnold Friedman had been recognized “as one of the two top computer educators in NY State,” and praising him for “work[ing] with local youngsters, teaching them computer programming as an extra-curricula[r] activity.”<sup>46</sup> No mention was made of the pending federal investigation: indeed, the article describes Arnold’s after-school program favorably. The second mention of the prosecution appeared in the *New York Times* on November 26, 1987.<sup>47</sup> Although *Newsday* acknowledged the existence of an investigation against Arnold Friedman, it carefully noted that NCPD detectives had “not received any complaints about [him].”<sup>48</sup> No further media reports of the investigation appeared until Arnold and Jesse were arrested.<sup>49</sup>

### 4. Witness Interviews

Despite Arnold Friedman’s November 3, 1987, arrest by federal agents, Nassau County officials did not begin conducting interviews until November 12, 1987. Between November 12, the date of the first verifiable interview, and November 25, 1987, the date of the execution of the state search warrant, police spoke with at least thirty-five children.<sup>50</sup> The first interviewee, Witness 18, immediately disclosed incriminating evidence concerning Arnold Friedman to Detectives Hatch and Jones.<sup>51</sup>

The following section summarizes interviews conducted during this initial time period, drawing from sworn statements and interview notes in which witnesses reported

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<sup>45</sup> Richard Esposito, *Ex-Teacher Focus of Porno Probe*, *Newsday*, Nov. 13, 1987, 1987 WLNR 162566.

<sup>46</sup> *Computer Teacher Wins Award*, *GREAT NECK RECORD*, Nov. 19, 1987.

<sup>47</sup> *Ex-Teacher Charged in Sex Abuse of Boys*, *N.Y. TIMES*, Nov. 26, 1987.

<sup>48</sup> This column appeared only in the “City Edition” of *Newsday*.

<sup>49</sup> Media reports naming the Friedmans were compiled first by a search of commercial databases, legal and otherwise. The Review Team also made direct requests to *Newsday* and the *Great Neck Record*, the publications that provided the most detailed coverage of the Friedman case, and obtained from them all articles relevant to the Friedman case. Similar requests were made to the *New York Daily News* and the *New York Post*. In the event that an article was neither indexed for electronic searching, nor preserved in a publication’s own archives, that article may not have been brought to the Review Team’s attention. When discussing the media coverage surrounding the Friedman case, the Review Team’s analysis was limited to newspaper accounts, and did not include what were likely corresponding levels of coverage on television.

<sup>50</sup> Case notes disclose a prior interview, dated November 8, 1987, in which another individual incriminated Jesse, but the investigation suggests that this handwritten witness report was dated erroneously, and likely occurred on *December* rather than November 8th. This conclusion is further supported by the absence of any statement from this witness in the affidavit filed in connection with the November 25th search warrant, discussed *infra*, and by a recent interview with the victim’s mother, who stated that Arnold and Jesse Friedman were arrested by the time police visited her home.

<sup>51</sup> It is not true, as has been suggested, that “in the first series of interviews, thirty in all, not a single student alleged abuse.” De Becker & Horowitz, *supra* note 13, at 12. In fact, this claim misrepresents even the primary source it cites, which states that “no child out of 30+ inter[viewed] had b[ee]n sodomized.” A842-45, notes of Nov. 24, 1987, meeting with detectives.

experiencing or observing criminal activity. In this and in all subsequent, similar sections, witness statements are the exclusive source of information.<sup>52</sup>

- On **November 12**, Detectives Hatch and Jones interviewed Witness 18,<sup>53</sup> who gave an unsigned statement in which he described Arnold Friedman touching children inappropriately, and engaging in early-phase “grooming” behavior. He said Arnold Friedman would gather a group of children around him, and read from a book that “had a picture of a pyramid on the top,” and “pictures of naked men” inside. As Arnold read, he would place his arms around the boys directly next to him. On one such occasion, Arnold rubbed Witness 18’s back under his shirt, and touched his “butt” over his pants. Arnold stressed to each of the children that they should not tell their parents about the book, and offered to reward their silence with videogames. On another occasion, Witness 18 said, Arnold took him to the back room to display a computer program with the image of a man, which asked and answered sexual questions (“If I were gay I’d like penises.”).<sup>54</sup> Witness 18 did not testify before the grand jury, nor did he seek therapy at the time. However, complainants, non-complainants, and (on one occasion) codefendant Ross Goldstein, would later describe activities resembling those described in Witness 18’s statement.
- Also on **November 12**, another child, Witness 30, was interviewed by Detectives Hatch and Jones. That child reported that Arnold Friedman would rub his shoulders, arms, legs, down to the side of his buttocks, while displaying pictures of naked boys. Notes of his interview also suggest that the child said that someone was photographed while leaving the bathroom, and the notes also contain the following words: “Get it Right,” “Come and Get It,” “Young Boys and Sex,” and “miniature rubber.”
- On **November 17**, Witness 7 was interviewed for the first time by Detectives Brimlow and Squeglia, and described borrowing two computer disks containing “adult games” from Arnold Friedman, seeing Arnold Friedman walk around in a robe, and viewing pornographic material in class. And, he said, he saw a vibrator, attached to a “leather belt,” in an adjoining room. Though he was told not to go into the room, the door to it was always left open.
- On **November 19**, detectives conducted interviews with two children. Witness 4 told Detectives Doppman and Jones that Arnold Friedman touched him and other

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<sup>52</sup> Bullet points in these sections set out interviews and statements taken by a detective, or team of officers. These bullet points do not reflect every police “contact” with a witness. Additional contacts occurred when witnesses participated in identification procedures, or completed “computer disk checklists” to indicate which, if any, disks they saw used in the Friedman class.

<sup>53</sup> New York law strictly forbids the disclosure of information tending to identify the victim of a sex crime. See Civil Rights Law § 50-b. To ensure compliance with this rule, this report does not name any of the victims, and excises any details that could allow the individual’s name to be discovered. As a matter of policy, even where not legally required, the same anonymity is extended to former students of Arnold Friedman’s computer class who deny having been abused; and to adult fact witnesses. Exception is only made where a non-complaining witness has allowed his name to be used.

<sup>54</sup> For further details, see Section IV.A.4(d), *infra*.

- students “on the legs.” Witness 17 stated to Detective Merriweather and Police Officer Durkin that Arnold gave him “bad hugs” that hurt, and that Arnold would hug him from behind and rest his head on his back, and also reported seeing a Polaroid camera in the Friedman home, in a big room with a couch.
- On **November 22**, Witness 6 told Detective Squeglia that Arnold Friedman would rub his penis against his back. According to him, Jesse would walk around the room with a camera around his neck and, when Arnold would leave the room with one child, Jesse would follow with camera in hand. He also described seeing sexual videogames like “Strip Poker” in class, and was allowed to take home disks containing games like “Dirty Movie” and “Stroker.”
  - On **November 23**, detectives took two additional statements. One was the first account to detail criminal conduct by Jesse Friedman.<sup>55</sup> Witness 10 told Detectives Doppman and Jones that Arnold *and* Jesse Friedman put their hands on his leg and rubbed him; Jesse touched his penis over his clothes; and Arnold and Jesse had the children drop their pants and bend over, while Arnold and Jesse put their penises “near” the students and took photographs. He also stated that Arnold put his penis in his “rear end,” causing pain and bleeding. Jesse photographed this. On the same day, Witness 7, in his second interview, provided a first statement to Detective Squeglia, recounting that Arnold Friedman rubbed his penis against his back, did the same to another student, and asked him to retrieve a disk from a location near “dirty magazines” depicting “naked boys.”
  - On **November 24**, detectives recorded an additional three statements. Witness 14 told Detective Merriweather and Officer Durkin that Arnold Friedman touched his penis under his pants, and would press his exposed penis against students’ backs while at their desks. Arnold also tried to put his penis in his rear, Witness 14 said, and it hurt him very much. He also stated that Arnold and Jesse Friedman would walk around the class with their penises exposed, ask children to touch them, and that he did touch Jesse’s penis. Witness 12 told Detectives Doppman and Jones that he observed Arnold Friedman playing with his own penis in the bathroom while the door was open, and that he observed several pornographic videogames. Jesse, he said, would photograph the class. Witness 4 provided Detectives Doppman and Jones with a first statement, on his second interview, describing Arnold Friedman putting his hand down Witness 4’s pants to touch his penis.

This information establishes that, twelve days into an investigation precipitated by and focused on *Arnold* Friedman’s illegal acts, and even though Jesse Friedman was away at college at the onset of the investigation, two students had identified him as an individual who participated in criminal sexual activity.

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<sup>55</sup> An interview with another individual, discussed *infra*, could instead be the first statement implicating Jesse. However, it is believed that this statement was incorrectly dated, and was actually taken later the next month.



**F. The Nassau County Investigation's Second Phase (November 25-December 17, 1987)**

Arnold Friedman's last computer class was held on Friday, November 20, 1987. Only a single student came to the class: Witness 2. Witness 26, Arnold's assistant since Jesse's departure for college, also arrived, expecting to carry on as usual. Arnold dismissed them both. The next day, Arnold called Witness 26 and informed him that he was discontinuing the Friday afternoon computer class, citing health reasons; Arnold said that he expected that all his other classes would continue. Witness 26 never heard from Arnold again. Around the same time, Arnold called Arline Epstein, the mother of Witness 25, one of the students enrolled in the Friday afternoon class. (Witness 25 and this "Friday class" are discussed below.) Arnold claimed that his arrest and the police investigation were the results of an overblown feud with a neighbor, and insisted that Epstein's son return to his class.<sup>56</sup>

**1. The Search Warrant and Arrests**

Meanwhile, the police investigation intensified. In addition to the reports of abuse described above, several other students described having access to pornographic videogames, and some said they borrowed them from the Friedman house. One student provided Detective Squeglia with a copy of a disk containing "Dirty Movie" and "Stroker," and said he had obtained it from Arnold Friedman's class. On the basis of these and all preceding statements, on November 25, 1987, the Nassau County Police Department executed their own warrant on the Friedman home. This came twenty-two days after Arnold Friedman's home was first searched by federal agents. During the execution of this warrant, detectives seized computers, audiovisual material, a "flesh colored artificial penis," and a "sexual aid."<sup>57</sup> Detectives found and removed a vibrator, described at the time as "child-sized," from Arnold Friedman's office.<sup>58</sup>

Because Jesse Friedman did not attack his conviction until 2004, more than fifteen years after his guilty plea, these items of physical evidence were all routinely destroyed pursuant to police procedure. Accordingly, no forensic analyses, such as DNA tests, could be performed on the objects. Police also seized a number of computer disks, later found to contain the following programs, among others:

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<sup>56</sup> See A837-41, notes of conversation between Arline Epstein and Arnold Friedman.

<sup>57</sup> See A576.

<sup>58</sup> The description was reported by the media after the case resolved, but does not appear in police documents. See A906, at 2. It is also chronicled in contemporaneous notes provided to the Review Team by Arline Epstein (see A846-51), notes of conversation with Detective Wallene Jones) and acknowledged by David Friedman in a private journal. See A431, excerpt 7 (referring to a "little 3[inch] dildo").

| <b>Video Game Title</b>            | <b>Police Description<sup>59</sup></b>  |
|------------------------------------|---|
| <b>Sex Style Test</b>              | “Ask fifteen (15) sexual related questions. Rates you on life satisfaction, sensuality, eroticism.”   |
| <b>Strip Poker</b>                 | “Play draw poker with ‘Suzi & Melissa.’ Removal of clothing part of wager.”   |
| <b>Farmer’s Daughter</b>           | “Story of traveling salesman coming upon farmer’s house and meeting farmer’s daughter.”   |
| <b>Mad Party Fucker</b>            | “Story of party at mansion (orgy).”   |
| <b>Girls They Want To Have Fun</b> | “Animation of naked woman masturbating—operate joystick to increase score.”   |
| <b>Stroker</b>                     | “Animation of hand stroking penis—operate with joystick to control stroking action to increase score and prevent premature ejaculation.”                                    |
| <b>Load Me</b>                     | “Program appears with German words—after about 30 seconds letters are erased with ‘P’s, screen goes blank and animation appears with couple performing sexual intercourse.” |
| <b>Dirty Movie</b>                 | “Animation appear[s] of woman who undresses[,] spreads her legs[,] and then masturbates/urinates.”  |
| <b>Seasons Greeting</b>            | “Animation of Mickey Mouse, dressed in Santa suit, appears with erection and ejaculating.”  |

Also recovered during the execution of the warrant were two original photographs of nude children,<sup>60</sup> described alternately in police documents as “2 color photos of boy and girl from the neck to the thighs”<sup>61</sup> and “2 snapshots, 1 boy with pants down, 1 girl naked waist down.”<sup>62</sup> Because the heads were torn off, no identification of the children could be made. Other items discovered included “3 sheets advertising homosexuality with boys,” movie cameras and Polaroid cameras, and pornographic movie reels.<sup>63</sup> In the course of their search, police also discovered a false wall compartment under the stairs of the Friedman home. Federal investigators had no recollection of this space. In a house where other closets were filled to capacity, state investigators found the compartment empty. In interviews, Jesse expressed surprise that this compartment was empty; it was well-known to him as a storage space for props and accessories used in David’s clown and magic acts.

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<sup>59</sup> All descriptions are drawn from paperwork filed by police explaining why some items—these disks, *inter alia*—would not be returned to the Friedmans at the close of the investigation. See A407-10.

<sup>60</sup> Police reported *two* such pictures to a group of concerned parents, including Arline Epstein. See A852-57, notes of conversation with Dr. Joyce Parks.

<sup>61</sup> A580.

<sup>62</sup> A481.

<sup>63</sup> See *id.*

Simultaneously, police arrested Arnold Friedman on charges involving sodomy, sexual abuse, and endangering the welfare of a child, and Jesse on charges involving sexual abuse. Elaine Friedman was also arrested for attempting to punch Detective Sergeant Galasso.<sup>64</sup> At their arraignment the next day, the court set Arnold's bail at \$1 million (or \$500,000 cash), and Jesse's at \$500,000 (or \$300,000 cash).<sup>65</sup>

## 2. Continuing Media Coverage

Arnold Friedman's arrest drew significant media coverage. The *New York Post* and *Daily News* ran the first articles portraying the investigation as a broad effort, reporting that "Nassau County cops are questioning more than 100 children suspected of being molested by their Great Neck computer teacher."<sup>66</sup> The articles made only passing mention of Jesse Friedman.<sup>67</sup> In another *Newsday* article that ran the day after the Friedmans' arraignments, Arnold's former colleagues expressed their surprise at his arrest.<sup>68</sup> Though Arnold Friedman was apparently suspended from teaching on November 20th, no report of his suspension reached the newspapers until a December 3rd article in the *Nassau Herald*.<sup>69</sup>

Subsequent coverage discussed other case details. One *Newsday* article placed the Friedman arrest in the context of a larger "crackdown" on mail-order child pornography.<sup>70</sup> A November 29 *Newsday* story discussed the psychology of dealing with sex abuse victims, and reported that four of the Friedmans' victims would seek therapy,<sup>71</sup> while a third *Newsday* story reported that the Nassau County District Attorney would seek AIDS tests of both Friedman men.<sup>72</sup> An analysis of media reports identifies less than twenty articles between November 25 and December 17, 1987, discussing the case, spread over four newspapers, and less than ten between December 17 and the date of

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<sup>64</sup> The Friedmans were arraigned before District Court Judge Richard LaPera. *Metro Dateline*, N.Y. Times, Nov. 27, 1987, available at <http://www.nytimes.com/1987/11/27/nyregion/metro-dateline.html>.

<sup>65</sup> *Id.* A second article noted that the court lowered the bail requirement for Arnold and Jesse Friedman. Robin Topping, *Court Lowers Bail in Sex Abuse Case*, NEWSDAY, Dec. 2, 1987, 1987 WLNR 197789. Arnold was, however, denied bail in the federal case. See Pete Bowls & Carolyn Colwell, *Suspect in Child Pornography Called a Danger, Denied Bail*, NEWSDAY, Dec. 12, 1987.

<sup>66</sup> Mike Brennan, *Cops Quiz 100 Kids in Teacher Sex Case*, N.Y. POST, 7, Nov. 27, 1987; see also Michael Hanrahan & Gene Mustain, *Sex Abuse Charged*, N.Y. DAILY NEWS, Nov. 26, 1987.

<sup>67</sup> Another *Post* article simply made no mention of Jesse Friedman at all. See Robert Weddle *et al.*, *Ex-Teacher Held as Kid Abuser*, N.Y. POST, Nov. 26, 1987.

<sup>68</sup> Dan Fagin *et al.*, *Colleagues Shocked, Say Suspect Was Widely Admired Teacher*, NEWSDAY, Nov. 27, 1987, 1987 WLNR 192713.

<sup>69</sup> *Wdmr Academy Suspends Accused Molester*, NASSAU HERALD, Dec. 3, 1987. The abbreviation for "Woodmere" appears in the original article.

<sup>70</sup> See Carolyn Colwell, *U.S. Crackdown on Porn Led to Abuse Suspect*, NEWSDAY, Nov. 28, 1987.

<sup>71</sup> Kathy Boccella, *Parents Seek Therapy for Abuse Victims*, NEWSDAY, Nov. 29, 1987, 1987 WLNR 188022.

<sup>72</sup> *DA to Seek Order for AIDS Test*, NEWSDAY, Nov. 29, 1987, 1987 WLNR 188047; see also Robert Weddle, *DA: Test Dad & son in Sex-Abuse Case for Deadly Virus*, N.Y. POST, Nov. 28, 1987. Coverage of this particular aspect of the case continued in December of the same year. See Robin Topping, *2 Plead Innocent to Sex Abuse; Teacher Refuses Request to Take AIDS Test*, NEWSDAY, Dec. 10, 1987, 1987 WLNR 171495.

Arnold's guilty plea, on March 25, 1988. This includes reports that Arnold Friedman had been released to house arrest.<sup>73</sup>

### 3. Additional Witness Interviews

Between November 25 and December 17, 1987, police investigators met with eleven victims alleging criminal activity who gave sworn statements against Jesse Friedman. (Two of those victims had previously been interviewed, but had not made disclosures against Jesse.) After that point, police took no new substantive witness statements until April 1988.<sup>74</sup> One interview took place in February of 1988, but police documented the interview with only a single word, "negative," on a notecard. Based on handwritten notes from detectives, several undated, non-incriminating witness interviews may also have been conducted during that period, as well.

Denis Dillon, District Attorney at the time, chose to present information drawn from these interviews to two successive grand juries, resulting in two separate indictments. This decision was first reported on January 13, 1988, when prosecutors publicly stated that they expected to file a second accusatory instrument against the Friedmans.<sup>75</sup> The issuance of the second indictment resulted in both Arnold and Jesse being re-arrested, and in both being tested for AIDS.<sup>76</sup>

Relevant reports are summarized below. While reviewing the below statements, it is critical to bear in mind that in 1987, a charge of "sodomy" did not require an act of penetration, and could be committed by the touch of penis to anus or mouth.

- On **November 30**, Detectives Myers and Fiore took a first written statement from Witness 5, at the witness's second meeting with police. The statement indicated that Arnold Friedman rubbed his penis against Witness 5's back, and did the same to other children. Another child, Witness 7, met with police for the third time, and provided a second written statement to Detective Squeglia, in which the child stated that Jesse would engage in sexual activity with Arnold Friedman in clear view, expose his own penis, and touch other children's penises. He also reported that Arnold Friedman would rub students' penises, and anally sodomize them. This is the first time Witness 7 acknowledged criminal behavior by Jesse Friedman.

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<sup>73</sup> Robin Topping & Kathy Boccella, *Avoid Children, Suspect Ordered; Teacher in Sex Case Is Under House Arrest*, NEWSDAY, Jan. 14, 1988, 1988 WLNR 184384.

<sup>74</sup> Some media reports suggest that police met with new victims between the end of December 1987, and February 1988. See Alvin E. Bessent, *New Sex Abuse Charges Expected*, NEWSDAY, Feb. 9, 1988, 1988 WLNR 189869 ("Sources said new charges against Friedman will be based on information from about 10 boys . . . who have come forward since December."). This is not completely accurate.

<sup>75</sup> Robin Topping, *New Accusations in Ex-Teacher's Sex-Abuse Case*, NEWSDAY, Jan. 13, 1988, 1988 WLNR 179640.

<sup>76</sup> See Phil Mintz, *House-Arrest Order in Kid-Porn Case*, NEWSDAY, Jan. 12, 1988, 1988 WLNR 175178; Alvin E. Bessent, *2 Charged in Sex Abuse of 8 More Boys*, NEWSDAY, Feb. 10, 1988, 1988 WLNR 158363.

- Also on **November 30**, Detective Merriweather and Officer Durkin met with Witness 23, who told them<sup>77</sup> that Arnold Friedman would place children on his lap, rub their legs and shoulders, and make the children uncomfortable. Witness 23's mother had removed him from the Friedmans' class after hearing about this conduct, and declined to re-enroll her son even after Arnold called to offer a reduced rate for future classes. Witness 23 did not testify before a grand jury against either of the Friedmans. In an interview completed during this investigation, the same individual stated that once, while urinating in the bathroom, he heard the door open behind him, saw a flash of light, and when he left, saw Jesse Friedman standing there, possibly in the company of one of his friends. Asked what the flash was, Jesse denied that any such thing had happened.
- On **December 2**, Detectives Doppman and Jones took a statement from Witness 13 who stated that Jesse Friedman engaged in oral sex with Arnold Friedman while in the classroom. The child also said that Jesse had removed Witness 13's pants and touched him on the buttocks, forced him to touch Jesse's penis, and that Jesse had anally sodomized him. Arnold Friedman also fondled the child, twice pulled him into a room to touch his penis, and twice anally sodomized him.
- On **December 3**, Detective Brimlow spoke with Witness 26, the teenager who replaced Jesse as Arnold Friedman's assistant in the computer class between October 8 and November 20, 1987. He was aware that disks for the games "Strip Poker" and "Dirty Movie" were in the class's disk library, and that only the Friday afternoon class (which included a large number of complainants) was allowed to remove games from the premises. He observed that, when Arnold Friedman helped children at their computer desks, he would lean against their backs. He further observed Arnold comfort a child—who was also a complainant—by placing him on his lap, and recalled seeing Arnold lead children to a table, where he would show them magazines and papers. Witness 26 did not observe the contents of these papers.
- Also on **December 3**, in his first written statement, during a second documented interview, Witness 17 described to Detective Merriweather and Police Officer Durkin sexual criminal acts performed by Arnold and Jesse Friedman. Jesse, he said, anally sodomized him and another child, exposed himself, and invited children to touch his penis. The child further said that Arnold Friedman put his hand down Witness 17's pants, touched his penis, and anally sodomized him twice in class. Witness 17 said Arnold Friedman did the same to other students. After one such incident, he saw "sticky white stuff." He also described being shown pornographic magazines and videogames, some of which were pre-loaded on the computers when the children sat down.
- On **December 4**, Witness 19 spoke with Detectives Doppman and Jones, and described sexual conduct by both Arnold and Jesse Friedman. By his account, Jesse Friedman fondled and photographed him and other children with their pants

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<sup>77</sup> Unlike most witness encounters summarized in this section, this interview was never reduced to a written statement, signed by the witness and a detective. This summary of the event is drawn from handwritten interview notes.

- down, and anally sodomized him twice, ejaculating each time into a tissue. He described similar abuse at the hands of Arnold Friedman, stating that Arnold anally sodomized him at his computer terminal a total of five times, ejaculating each time onto the floor. Eventually, this child stopped attending computer class, but did not tell his parents why, because he was “scared.” Witness 19 did not testify before the grand jury.
- Witness 8 gave a written statement dated November 8, 1987 to Detective Merriweather. However, because detectives describe an interview conducted on November 12 as the first interview in the case, it is likely that Witness 8’s statement instead occurred on **December 8**, 1987. In that interview, the child stated (*inter alia*) that he witnessed Jesse Friedman anally sodomize another child and both Friedmans rub their penises against children’s backs. Jesse also made him, Witness 8, touch Jesse’s exposed penis. Witness 8 was also exposed to nude photographs of adults and children, and stated that he saw Arnold Friedman lead a child “upstairs” and that, later, he heard screaming.
  - On **December 9**, Witness 1 gave a statement to Detective Brimlow, in which he described observing another child being struck on the arm by Jesse Friedman, but denied witnessing or suffering any sexual abuse himself. Though Witness 1 testified before the grand jury, all charges voted by the grand jury based on his testimony were stricken by Judge Boklan, citing insufficient evidence. He would later recant his statement entirely in an affidavit submitted with Jesse Friedman’s habeas petition.<sup>78</sup>
  - On **December 10**, Witness 3 told Detective Merriweather that Jesse Friedman threw students around “violently” when he was “upset.”<sup>79</sup> Also according to Witness 3, Jesse allegedly also walked around the class with his penis sticking out, asking students to touch it. And, Jesse also made students follow him into the hallway. After they left, Witness 3 indicated he could hear them exclaim “ow.” He also stated that Arnold Friedman would leave his penis exposed during class, and that he saw both games of a sexual nature, and magazines of naked men.
  - Also on **December 10**, Witness 22 provided a statement to Detectives Doppman and Jones detailing sexual abuse by both Arnold and Jesse Friedman. He stated that Jesse would cover another student’s mouth while Arnold anally sodomized the child. He also said that Jesse made him touch Jesse’s penis, and forced his mouth into contact with Arnold Friedman’s penis. He also recalled being shown child pornography by Arnold Friedman, and later being anally sodomized by Arnold Friedman on three occasions. And, lastly, he saw Arnold and Jesse

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<sup>78</sup> Affidavit of [REDACTED] (Dec. 23, 2003). This individual is one of several who gave an affidavit to filmmaker Andrew Jarecki, which Jarecki used in his efforts to exonerate Jesse Friedman. Though one of the fourteen witnesses who originally testified against Jesse Friedman, all charges related to Witness 1 were dismissed. Therefore, Witness 1 is not included in tallies of Jesse’s victims.

<sup>79</sup> Significantly, this report is partially corroborated by a letter from Jesse Friedman, which he called his “true confessions” letter, most likely written a year later, in which he described lifting up children to control them. *See* A450. Peter Panaro, Jesse’s attorney, told the Review Team that Jesse had admitted to being physical with students; and, according to Howard Friedman, Arnold’s brother, Jesse admitted that he “may have slapped them,” the students, “around a bit.”

Friedman engage in oral sex acts with each other. Witness 22 did not testify before the grand jury against either Friedman. This date is notable as an example of witnesses offering statements incriminating Jesse Friedman, simultaneously, to different detective teams.

- On **December 11**, Witness 32 was interviewed by Detective Brimlow, and discussed being allowed to take two computer disks home from the computer class. One of them had the game “Strip Poker” on it, and he gave the disk to Detective Brimlow.
- On **December 16**, Witness 15 stated to Detective Merriweather and Police Officer Durkin that Arnold and Jesse Friedman would both leave their penises exposed during class and force students to touch them. Both Friedmans, he said, hit him several times on the arm. He also stated that “every time” a child would leave for the bathroom, either Arnold or Jesse Friedman would follow the child, and the child would return with tears in his eyes. He claimed to have observed Arnold anally sodomizing another child, and that Jesse once held him down while Arnold attempted to anally sodomize him. And, he described the Friedmans threatening to burn down the students’ houses and have robbers kill their parents if he, or any other child, disclosed the abuse to parents or police.
- On **December 17**, in an interview with Detectives Squeglia and Brimlow, Witness 16 described Arnold and Jesse removing children from class for significant periods of time. By his account, Arnold and Jesse would take a child to Jesse’s room. Shortly thereafter, he would hear banging on the walls and cries for help, and the child would emerge five to ten minutes later crying. He also described Arnold and Jesse threatening children into silence. The threat was that they would come to their houses and take them away never to be seen again. Additionally, he stated that Jesse forced his head down to Jesse’s penis while Arnold anally sodomized him, and that Arnold and Jesse made the children stand by their seats with their penises exposed.

#### 4. The First and Second Indictments

Based on the testimony of five complainants, as well as others, on December 7, 1987, a grand jury returned Indictment 67104, charging Arnold Friedman with three counts of Sodomy in the First Degree, ten counts of Sexual Abuse in the First Degree,<sup>80</sup> two counts of Attempted Sexual Abuse in the First Degree, and twenty-nine counts of

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<sup>80</sup> In 1987, Sexual Abuse in the First Degree occurred when the defendant “subjects another person to sexual contact,” as relevant here, “[b]y forcible compulsion,” or “[w]hen the other person is less than eleven years old.” N.Y. PENAL LAW §§ 130.65(1), (3). “Sexual contact” means “any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party,” and “includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.” *Id.* at § 130.00(3).

Endangering the Welfare of a Child.<sup>81</sup> The grand jury indicted Jesse Friedman on three counts of Sexual Abuse in the First Degree, five counts of Endangering the Welfare of a Child, and two counts of the Use of a Child in a Sexual Performance. The counts faced by Jesse were based on grand jury testimony given by witnesses first interviewed by Detectives Brimlow, Doppman, Jones, Merriweather, Squeglia, and Officer Durkin. Though some witnesses had signed statements describing acts of sodomy, by the time this indictment issued, those witnesses had not yet testified before the grand jury. As a result, this first indictment charged no sodomy counts against Jesse Friedman. Judge Boklan's review of grand jury minutes, which was later confirmed by this investigation, found each of these surviving charges was supported by grand jury testimony.

Building on the testimony of an additional six complainants who had given statements to detectives before December 17, 1987, and testified thereafter, a different grand jury returned Indictment 67430 on February 1, 1988, expanding the charges against the defendants as follows:<sup>82</sup>

|   | <b>Arnold Friedman</b> |                    | <b>Jesse Friedman</b> |                    |
|---|------------------------|--------------------|-----------------------|--------------------|
|   | <b>First Ind.</b>      | <b>Second Ind.</b> | <b>First Ind.</b>     | <b>Second Ind.</b> |
| <b>Sodomy in the First Degree</b>                 | 3                      | 5                  | 0                     | 6                  |
| <b>Sexual Abuse in the First Degree</b>           | 10                     | 18                 | 3                     | 10                 |
| <b>Attempted Sexual Abuse in the First Degree</b> | 2                      | 2                  | 0                     | 1                  |
| <b>Endangering the Welfare of a Child</b>         | 29                     | 38                 | 5                     | 19                 |
| <b>Use of a Child in a Sexual Performance</b>     | 0                      | 0                  | 2                     | 0                  |

At this juncture, the exclusive sources of sodomy charges against Jesse Friedman were two children, both of whom were interviewed by the team of Detective Merriweather and

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<sup>81</sup> Also in 1987, Endangering the Welfare of a Child required proof that, as relevant here, the defendant "knowingly act[ed] in a manner likely to be injurious to the physical, mental or moral welfare of a male child less than sixteen years old." N.Y. PENAL LAW § 260.10(1).

<sup>82</sup> This second indictment included testimony from children whose statements alleging criminal conduct were taken by December 16. It also included testimony from the child whose interview, the Review Team believes, likely took place on December 8, 1987, rather than the reported date of November 8, 1987.



Police Officer Durkin. A third student had also told police that Jesse Friedman forced him into acts of oral sodomy, but did not testify until the third grand jury presentment.

By December 17, 1987, just over a month after the Nassau County Police investigation began, police had interviewed at least thirteen children who reported Jesse Friedman engaging in criminal activity in the class. Charges against Jesse in the first two indictments would be sustained by testimony from nine of those children.

## 5. Notes on the Indictments

During pretrial motion practice, Judge Boklan dismissed several counts from each of the three indictments, citing, for example, insufficient evidence. On July 14, 1988, she dismissed nine total counts from the first two, and on November 29, 1988, she dismissed fourteen counts from the third indictment.<sup>83</sup> Each indictment count to survive dismissal by Judge Boklan was adequately supported by grand jury testimony, based on the Review Team's investigation, with the exception of one misdemeanor count. Because grand jury testimony is confidential, this report cannot reproduce that analysis in any greater detail. Cases involving sexual abuse—and especially the abuse of children—carry with them unique concerns for victim anonymity, and grand jury testimony may not be disclosed absent court order.<sup>84</sup> These concerns do not diminish, and may even intensify, as the victims pass into adulthood.

It is important to understand that one of the charged crimes—sodomy—has different legal and colloquial meanings. The crime of sodomy as defined in 1987 did *not* require proof of forcible anal penetration,<sup>85</sup> but could be sustained by proof of the touch of penis to anus or mouth.<sup>86</sup> And, depending on the age of the victim, a single act of sodomy can be charged twice, on a theory of (1) forcible compulsion and (2) minority.<sup>87</sup> Therefore, an indictment charging, for example, 100 counts of sodomy does not necessarily represent 100 separate acts of violent penetration.

## G. **Arnold Friedman's Guilty Plea and Sentence**

Recordings of family discussions demonstrate that the Friedman family extensively (and angrily) debated the question of whether Arnold should plead guilty to

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<sup>83</sup> See A394-405.

<sup>84</sup> See *infra* Section II.C.2.

<sup>85</sup> The modern statute also makes clear that the crime, since renamed “Criminal Sexual Act in the First Degree,” may be predicated on “oral sexual conduct” or “anal sexual conduct,” and that neither term requires penetration. See N.Y. Penal Law § 130.00(2)(a)-(b) (“‘Anal sexual conduct’ means conduct between persons consisting of contact between the penis and anus.”).

<sup>86</sup> See, e.g., *People v. Furman*, 177 A.D.2d 591, 592 (2d Dept. 1991) (“We reject the defendant’s contention that penetration is a necessary element of sodomy in the first degree.”) and *People v. Francis*, 153 A.D.2d 901, 902 (2d Dept. 1989) (“[T]he People were required to prove that the defendant engaged in ‘deviate sexual intercourse’ with the victim; that is that there was contact between the penis and the anus, the mouth and the penis or the mouth and the vulva.”).

<sup>87</sup> The crime of sodomy by forcible compulsion (N.Y. Penal Law § 130.50[1]) is legally distinct from the crime of sodomizing a child under eleven years old (*id.* at § 130.50[3]).

the state charges. Most of the discussion revolved around the question of whether Arnold's plea would help or hurt Jesse.<sup>88</sup> Most of these conversations were led by Jesse Friedman, who vigorously defended his father. The recordings also shed light on a family dynamic in which the three sons attacked and otherwise blamed their mother, Elaine Friedman, for the family's troubles.

On March 25, 1988, almost two months after the filing of the second indictment, Arnold Friedman pled guilty to a limited set of charges—eight counts of Sodomy in the First Degree, twenty-eight counts of Sexual Abuse in the First Degree, four counts of Attempted Sexual Abuse in the First Degree, and two counts of Endangering the Welfare of a Child—in full satisfaction of both state indictments.<sup>89</sup> On March 29, 1988, he also pled guilty to the federal charges pending against him, and was sentenced by Judge Mark A. Constantino to serve ten years in a federal prison.<sup>90</sup> At the time of his guilty pleas, Arnold Friedman expected to serve his federal and state terms of imprisonment concurrently. This expectation proved accurate when on May 13, 1988, he was sentenced by Judge Boklan to serve a concurrent ten-to-thirty years in state prison. His federal conviction required him to immediately begin serving his sentence at a prison in Wisconsin.

After Arnold Friedman pled guilty, at the NCPD's request, and with the advice of his attorney, he agreed to sit for a "close-out" interview. As agreed to by detectives and Arnold's attorney, and noted in a transcript of the session ("Close-Out Statement"), Arnold's participation in the interview was contingent upon his receiving immunity from further prosecution, and upon the guarantee that the interview would not be used to prosecute Jesse Friedman.

During the interview, Arnold initially maintained his innocence, to the point of denying any of the charges to which he had just pled guilty. After conferring with counsel, Arnold volunteered detailed accounts of the sexual acts he had performed with some of the children entrusted to his care, even describing his victim selection methods, and how he would "distract" prospective victims with computer games. He also spoke about the "type" of children he found attractive, and his method for "grooming" victims. Contrary to his later public presentation of the interview—"I had to lie that I abused *every one* of my students"<sup>91</sup>—during the close-out interview, Arnold volunteered detailed information while admitting specific instances of abuse and denying others. Arnold was not asked about, and did not mention, anything related to "sex games" or other abusers. In all, the interview included Arnold's admission that he molested forty-one children—including one child who, though he was not a complainant, had given a statement

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<sup>88</sup> See Discussion between Arnold, David, Elaine, Jesse, and Seth Friedman, at 20:00 (Mar. 24, 1988).

<sup>89</sup> *Friedman*, 618 F.3d at 149 ("On March 25, 1988, Arnold Friedman pled guilty to forty-two counts of child sexual abuse"). The Second Circuit and others use the colloquial and legal meanings of "sexual abuse" interchangeably.

<sup>90</sup> Leonard Buder, *A Pornographer Given 10 Years by a U.S. Judge*, N.Y. TIMES, Mar. 29, 1988.

<sup>91</sup> A562, Open Letter from Arnold and Jesse Friedman (emphasis in original). This characterization was simply assumed to be true by Jesse's advocates. See De Becker & Horowitz, *supra* note 13, at 18.

implicating Arnold Friedman in sexual abuse. He also denied any criminal conduct towards twelve children, and insisted that he had not abused any of the students he taught at the Woodmere Academy, and Bayside High School.

#### **H. The Nassau County Investigation's Third Phase (December 17, 1987, to December 20, 1988)**

With the conclusion of these interviews, the police investigation against Jesse Friedman entered its third and, in retrospect, final phase. As of December 17, 1987, police were not actively continuing to investigate. No new documented statements were taken until late April 1988, in the aftermath of Arnold Friedman's March 25, 1988, guilty plea.

##### **1. Final Witness Interviews**<sup>92</sup>

Although Arnold Friedman's guilty plea ended the case against him, Jesse Friedman continued to maintain his innocence, and in the spring of 1988, A.D.A. Joseph Onorato directed the police to continue the investigation.<sup>93</sup> NCPD detectives resumed interviewing former students, and took the first statement from this final phase of the investigation on April 29, 1988.<sup>94</sup> Detectives conducted interviews resulting in incriminating written statements from, at most, two new students during this period.<sup>95</sup> The majority of other interviews consisted of follow-up meetings with victims who had previously given statements against either Arnold or Jesse Friedman. Several students' accounts substantially expanded Jesse's role in the case. These accounts also, for the first time, included descriptions of criminal activity perpetrated by three other abusers: Ross Goldstein, Suspect 1, and Suspect 2. Material interviews are summarized below:

- On **April 29**, 1988, during his fourth interview with police, Witness 17 gave a second written statement to Detective Merriweather in which he reported seeing Arnold and Jesse Friedman anally sodomize other children while in class.
- On **May 18**, in his second statement, Witness 16 reported to Detectives Reihing and Myers that Jesse Friedman forced his head down to Jesse's penis, while Arnold anally sodomized him. According to the witness, this act took place in Jesse's room. He also stated that both Friedmans showed him pornography involving men and boys together.

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<sup>92</sup> Note that, in this section, references to third parties are redacted.

<sup>93</sup> A291-92, memorandum from A.D.A. Joseph Onorato to Detective Sergeant Frances Galasso, Mar. 15, 1988, regarding need for additional investigation.

<sup>94</sup> This delay is interrupted by a single documented contact, which occurred on February 3, 1988, and was memorialized on a single note with the child's name and the word, "negative."

<sup>95</sup> There are two potential instances in which the NCPD *may* have conducted initial interviews after the Close-Out Statement. But neither interviewee is mentioned anywhere in the Close-Out Statement, likely foreclosing any possibility that investigators spoke with either as a direct result of some admission made by Arnold Friedman. Arnold *does* mention a child bearing the same first name as one subsequent interviewee, but the file shows that this child's family was first contacted prior to the Close-Out Statement.

- On **May 19**, Witness 2 provided a written statement to Detectives Merriweather and Squeglia. This statement was likely his second, preceded by an undated statement which can tentatively be placed as having occurred in November of 1987.<sup>96</sup> His first statement described criminal acts performed by both Arnold (anal sodomy) and Jesse Friedman (showing him pictures of men engaged in sexual acts). In his second statement, he expanded on those allegations, detailing anal and oral sodomy performed by both Arnold and Jesse Friedman.
- Also on **May 19**, Detectives Reihing and Myers interviewed Witness 9 for a second time, resulting in that witness's first written statement. In his statement, Witness 9 reported that Jesse Friedman had anally sodomized him, and physically abused both him and other children, for no apparent reason. Jesse, he said, would hold the students and turn them upside down by their stomach. Sometimes he had his pants down while he did it. He also said that Jesse would show them pictures of naked boys, and loaded games like "Strip Poker" onto the computers for Arnold Friedman to show the boys. Jesse had threatened Witness 9 and others into silence.
- On **May 26**, Witness 24 stated to Detectives Reihing and Myers that Arnold and Jesse Friedman would show him pornographic material; Jesse would rub up against the child; and that afterward, Jesse would threaten to take his parents away if he told anyone about the pictures.
- On **June 3**, Witness 7 spoke again with Detectives Merriweather and Squeglia, resulting in his third statement. This interview is notable for resulting in the first description of both (1) [REDACTED] (2) "sex games," each described below. He explained "Leap Frog" as a "game" where Jesse Friedman would perform oral sex on one student, who would then do the same to the next child in a row, and so on, down the row. [REDACTED] Witness 7 also described playing "Simon Says," and two variations of a "game" called "Super Hero." In one, two children would lie naked [REDACTED]; in another, one child would stand naked [REDACTED] [REDACTED] would play with their penises until "white stuff" came out onto the child's body. On the same date, he [REDACTED] [REDACTED] provided a statement to that effect.
- On **June 7**, Detectives Merriweather and Squeglia took Witness 15's second statement. Here, he also described [REDACTED] [REDACTED] that, in one case, Jesse ejaculated onto his shirt, which he tried to wash off. He also observed other children being abused by them. Further, he said that Jesse [REDACTED] anally

<sup>96</sup> This conclusion is based on how the witness described his age. Though the statement cannot be dated conclusively, the child's testimony does not form the basis for any charge until the third indictment.

- sodomized him, resulting in bleeding in his underwear. On **June 13**, this child's mother gave a statement in which she described seeing her son come home from computer class with a wet shirt, and seeing bloody underwear in his laundry.
- On **June 8**, Witness 8 gave his second statement in an interview by Detectives Merriweather and Squeglia. Here, too, he mentioned for the first time [REDACTED]  
[REDACTED]  
He claimed that [REDACTED] videotaped him as he was forced to perform oral sex on Jesse. He also reported he was made to perform oral sex [REDACTED], as Jesse anally sodomized him. He also said he played a game called "Leap Frog," which involved oral sodomy.
  - On **June 9**, Witness 17 gave his third statement to Detectives Merriweather and Squeglia. He also described the presence of Jesse's three friends, stating that they would hold him down while Jesse anally sodomized him. He also stated that Jesse made him perform oral sex on Jesse, and that he was anally sodomized [REDACTED]  
[REDACTED]—as were the other children. Additionally, he stated that [REDACTED]  
[REDACTED]
  - On **June 14**, Witness 11 spoke to Detectives Reihing and Myers, and provided a first written statement, in which he described seeing Jesse, [REDACTED]  
[REDACTED] sodomizing other children. He also observed Jesse restraining another child so that [REDACTED] could try to anally sodomize him. He also described several sex games. In one, Jesse [REDACTED] would jump off a couch, and attempt to anally sodomize children standing in front of them. They would publicly measure their penises; play "Nude Limbo"; and play a third "game," where Jesse [REDACTED] ran into the room naked, saying they were the "Three Musketeers," made the boys take their pants off, and bend over, after which one abuser rubbed his penis into Witness 11's "butt." Throughout, the child stated that Jesse photographed several such incidents and threatened to distribute the pictures if any of the children reported being abused.
  - On **June 15**, Detective Squeglia took a fifth statement from Witness 7, who described multiple incidents of anal and oral sodomy involving Jesse [REDACTED]  
[REDACTED]. He also provided the only description of a "game" called "Hora Bora Alice," in which [REDACTED] Jesse would perform oral sex with each other on a couch. In most cases the students only watched; sometimes they participated. This child remembered seeing [REDACTED] Jesse ejaculate, and being ejaculated on after participating in one such "game" ("I remember getting sperm on my body. I went to the bathroom and cleaned myself."). This interview was the first in which this child identified Jesse Friedman as someone who victimized him. In previous statements he had told police that he had watched Jesse abuse other boys.
  - Also on **June 15**, Witness 24 gave a second statement, again to Detectives Reihing and Myers, in which he described playing a sexualized version of "Simon Says" with Jesse. He also saw Jesse anally sodomize other children in class, and expose his penis repeatedly.
  - On **June 21**, Witness 5 spoke with Detectives Merriweather and Squeglia and provided a second statement. In this interview, the child first described criminal

- conduct by Jesse Friedman, involving both fondling and anal sodomy. He also described seeing Jesse walk around the class with his penis exposed, forcing children to touch it.
- On **June 22**, Witnesses 7 and 15 separately picked [REDACTED] out of a police lineup. Another witness failed to identify [REDACTED], while a fourth picked two people from the same lineup, one of which was [REDACTED].
  - On **October 13**, Witness 5 spoke again with Detectives Merriweather and Myers, for a fourth documented interview, leading to a third statement. He first described [REDACTED], in incidents of abuse, which he described as including “games” called “Leap Frog,” “Simon Says,” and “Super Hero,” some of which were videotaped. He further described anal and oral sodomy being performed between the children, [REDACTED]. He also picked [REDACTED] out of a photographic array.
  - On **October 25**, Witness 15 spoke with Detectives Merriweather and Squeglia, resulting in his third statement. He recalled the identity of [REDACTED] by holding children down so they could be sodomized, orally and anally. He also recalled an activity called “Extravaganza,” which consisted of children watching while [REDACTED] the adults performed sex acts on each other while a friend videotaped.
  - On **November 1**, Witness 13 provided a second written statement to Detectives Merriweather and Jones, in which he stated that everyone played “Simon Says,” involving such commands as “put your finger in someone’s butt,” “stick your penis in someone’s butt,” among other instructions. He also stated that [REDACTED] held him down while Arnold Friedman anally sodomized him.

## 2. Summary of Statements Concerning “Sex Games”

As set out above, several witnesses described sexually explicit group activities which were presented as “games” taking place in the classroom, rather than behind closed doors. Such activities were allegedly organized by Arnold and Jesse Friedman, and often included [REDACTED]. A follow-up interview conducted on June 3, 1988, by Detectives Merriweather and Squeglia was the first interview to discuss such activities. Thereafter, several other witnesses described similar “games,” sometimes varying in detail, and including, in some instances, the participation of other adult offenders.

Only three children described a game called “Leap Frog,” in which a first player would leap over a second, and then be sodomized by the second player.<sup>97</sup> Each independently described the other as a participant in the game. (Witness 2, in an

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<sup>97</sup> Two of these complainants described a version of “Leap Frog” involving oral sodomy by Jesse Friedman. A third said that “leapfrog” involved no “leaping”; rather, participants would perform sex acts on those next to them. A fourth child, a non-testifying victim who spoke to the Review Team, recalled playing “Leap Frog” while clothed, sometimes with other students, and sometimes with just Jesse Friedman.

interview with filmmaker Andrew Jarecki, would also later describe being forced to watch Leap Frog.<sup>98</sup> In 1988, he did not mention witnessing these “games.” Two of those three children also described games called “Simon Says”<sup>99</sup> and “Superhero,”<sup>100</sup> and a third witness also described “Simon Says.” During the same time period, several games—“Three Musketeers,”<sup>101</sup> “Extravaganza,”<sup>102</sup> “Nude Limbo,”<sup>103</sup> “Hora Bora Alici,”<sup>104</sup> a fifth game where adults would jump off the couch and sodomize children upon landing, and a sixth game involving measuring penises—were each reported by only one child each. Again, Detectives Merriweather and Squeglia took the majority of statements in which these games were described, although Detectives Reihing and Myers received similar accounts from two different children on June 11 and 15, respectively.

Each student reported that all such games were played in the classroom, rather than behind closed doors, and detectives attempted to verify these accounts by compiling lists of the other students in the class, who would have (necessarily) either observed or participated in the games. One student specifically denied seeing anything of the sort; while other interviews were conducted, no statements were taken, leading the Review Team to conclude that these subjects did not disclose similar conduct to the police.

### 3. Police Identify Three Potential Accomplices

Before June 3, 1988, no witness had ever indicated the presence of more than two abusers—father and son—in Arnold Friedman’s computer class. Just one week later, however, four students had signed statements detailing crimes committed by one, two, or three additional abusers. One of these abusers, Goldstein, would later be indicted on charges stemming from these interviews. His case is analyzed below. The other two, though never prosecuted, were both subjected to varying degrees of police examination. This section analyzes the development of the case against these young men.

#### a. *Early Investigation Excluded Other Adult Involvement*

Though this phase of the investigation was the first to result in the serious investigation of additional parties, it was not the first time police had considered that

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<sup>98</sup> See Doc 83, transcript of interview with Computer Student 1, tape 135, at 3.

<sup>99</sup> This “game” appears to have followed the traditional rules—a central figure uses the phrase “Simon Says” to preface commands—except that here, each command required a sexual act (“Simon Says, touch your penis.”).

<sup>100</sup> “Superhero” was described by one witness as being “played” in one of two ways: either a child would lie down, and an abuser would ejaculate onto the child from a standing position, or an abuser would lie down on the floor, naked, with one or more children on top of him, and another abuser would then lie on top of them.

<sup>101</sup> In “Three Musketeers,” Jesse Friedman, [REDACTED] and a third individual would run into the room and “rub” their penises on the buttocks of child victims.

<sup>102</sup> This “game” involved Arnold and Jesse Friedman performing sex acts on each other and [REDACTED], which other children were made to watch.

<sup>103</sup> “Nude Limbo,” as described, involved children using a limbo bar while naked.

<sup>104</sup> This “game” involved two abusers naked and kissing on a couch, and may have included some children as participants.

other adults might have been involved in the case. Investigators became aware early on that a local high school student, Witness 26, had worked as Arnold Friedman's assistant in all class sessions between October 8, 1987, and November 20, 1987. In a December 3, 1987 interview with this individual, he described several details about the Friedman classes: he acknowledged, for example, that the class's computer disk library contained pornographic videogames—"Dirty Movie" and "Strip Poker"—and that only one class, the "Friday" class, could borrow games from that library overnight.

One child described being victimized by Arnold Friedman in the classroom while Witness 26 was present. However, despite his proximity to alleged abuse, Witness 26 was never arrested. So too with David Friedman, who expressed concern that police would indict him and use him against his brother Jesse.<sup>105</sup> But this never came to pass.

Similarly, *Capturing the Friedmans* notes another individual of high school age who spent "a lot of time" with Jesse Friedman at his house, lived in the house for at least several weeks during the relevant period and, by his account, saw nothing untoward take place there.<sup>106</sup> This individual spoke to members of the Review Team in connection with this investigation, and expressed his belief that he too had been a suspect during the initial investigation. He claimed he was advised to flee to the Lamptons over the Fourth of July weekend to avoid being arrested in connection with the case. However, despite his belief that his arrest was imminent, no such arrest occurred, and the police never did interview him.

*b. Police Focus on Ross Goldstein, and Suspects 1 & 2*

In addition to Goldstein, discussed below, the police seriously investigated only two other individuals. Investigators were led to them by witness reports indicating that three high-school age "friends" of Jesse Friedman had joined him, and acted as accomplices to him and Arnold Friedman.<sup>107</sup> Based on these reports, police presented children with yearbooks from local schools, and photographic arrays including potential suspects.<sup>108</sup>

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<sup>105</sup> See A435, excerpt 9 ("I'm probably not going to be arrested. They know I won't testify against Jesse, and, arresting me would delay the start of the trial") (emphasis in original).

<sup>106</sup> Transcript of *Capturing the Friedmans*, A155; see also generally Affidavit of [REDACTED] (Dec. 15, 2003).

<sup>107</sup> According to Goldstein, though, police began this investigation when, at an uncertain point before June 10, 1988, the name of a high school student was found on one of Arnold Friedman's disks. When officers went to meet this individual, he was in the company of three friends—including Goldstein. See Goldstein Interview 2 (Sept. 21, 1988), at 125-50 (containing one narrative of this meeting); A821, Goldstein Statement, Mar. 8, 2013. No evidence has been found to support this version of events.

<sup>108</sup> Note that this section discusses only identifications made by children who at some point reported criminal activity, and whose identification statements contain an indication of which subject was or was not identified.



In this manner, Suspect 1, [REDACTED] was identified by two different victims, once from a yearbook and once from a photographic array.<sup>109</sup> Thereafter, the suspect was monitored by police, arrested on June 10, 1988, and then asked to submit to questioning by detectives. The individual sat for a polygraph, which registered inconclusive results. A re-examination was “recommended,” but never completed.

However, Suspect 1 remained a person of interest, and police included his image in a photographic array that was shown to two other children. Neither child identified him. Suspect 1 was also included in a line-up procedure on November 17, 1988, where he was positively identified by three complainants, including one of the complainants who had previously failed to identify him from an array. At the lineup, four other complainants failed to identify him, and four identified someone else in the lineup. (Notably, of the four complainants who mis-identified Suspect 1, only *one* complainant had actually given a statement indicating that Jesse’s friends were present in the class.) Detective Sergeant Galasso and Detective Hatch presented the case to members of the District Attorney’s office for indictment in January 1989—after Jesse Friedman’s guilty plea—but the chief of the District Attorney’s Major Offense Bureau declined to prosecute Suspect 1, citing “insufficient evidence.”<sup>110</sup>

Suspect 2, [REDACTED] was included in a photographic array shown to one victim, on June 16, 1988, but was never identified. He was also later included in a line-up proceeding on November 17, 1988. Out of eleven complainants shown this line-up, eight made no identification, though four of those had never mentioned the presence of any of Jesse Friedman’s friends in their statements. Three identified someone else in the same lineup. All of those three had given statements describing Jesse Friedman’s friends. Suspect 2 was never charged.

### *c. Ross Goldstein*

On June 3, 1988, Witness 7 became the first victim to report that an accomplice had joined Arnold and Jesse Friedman in the classroom, and participated in the abuse of the computer students. That same day, police showed Witness 7 a yearbook containing pictures of Jesse’s classmates, from which Witness 7 identified both Ross Goldstein *and* Suspect 1 as accomplices.

Within a week, three others also implicated Jesse’s friends in similar acts. One, Witness 17, identified Goldstein by photo array, and another, Witness 15, identified him by name. On the strength of these reports police arrested Goldstein on June 10, 1988. Goldstein would later describe this arrest as particularly brutal: police pulled him from the street, he said, threw him in a van, and drove him around while standing over him and yelling at him. But the specific facts of the arrest cannot be corroborated. Though police

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<sup>109</sup> Presented with similar means of identification, though, one of these students later failed to identify him a second time.

<sup>110</sup> See A293, memorandum from Barry W. Grennan, Major Offense Bureau, NCDA, to Det. Sgt. Galasso, Sex Crimes Squad, NCPD (Feb. 15, 1989).

files document the arrest, they say only that he was “released following an investigation related to the reported sodomy,” and do not report how long he was detained, or if he was picked up in a vehicle. The record also annexes a *Miranda* waiver, signed and dated by Goldstein.

Eventually, three other witnesses would identify Goldstein as an abuser—Witnesses 5, 11, and 13—and Witness 3 would also identify him as someone who was present in the class, all in statements taken between June and November, 1988. In a line-up conducted on June 22, 1988, Goldstein was identified by two children. Another one made no identification. A fourth, Witness 17, identified *two* individuals from a line-up, one of whom was Goldstein. This child had previously identified him from a photographic array. He did not go on to testify against Goldstein in the grand jury.

In the fall of 1988, Goldstein began to cooperate with police in the case against Jesse Friedman in return for what he thought would be a favorable plea bargain, potentially including six months’ jail time, five years of probation, and a Youthful Offender adjudication. With his attorney present, Goldstein sat for four transcribed interviews with investigators—on September 8, September 20, October 5, and October 27, 1988—discussing how he had come to be involved with Jesse Friedman, and what he had done in the class. As summarized in a later opinion by the New York State Appellate Division, Second Department:

*[Goldstein], who was 15 and 16 years old when he committed the crimes, became repulsed by them, and six months before the Friedmans were arrested, the defendant disassociated himself from Jesse Friedman and his activities. Following the defendant’s indictment for a number of sex crimes, including Class B violent felonies, the prosecution . . . sought the defendant’s assistance in strengthening the case against Jesse Friedman, and in providing information concerning two other individuals suspected of being involved in the crimes.*<sup>111</sup>

Goldstein’s statements to police during these interviews were sometimes highly detailed, and sometimes vague. He described with specificity, for example, the first time he saw Jesse touch a child inappropriately. The child was playing a computer game, he said, that would prompt the user with sexual questions—“where is your penis?”—and, in response, Jesse touched his own penis, and then the child’s.<sup>112</sup> Jesse then instructed Goldstein to do the same.<sup>113</sup> When the game next prompted, “where can you stick your penis?”, Jesse

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<sup>111</sup> *People v. Ross G.*, 163 A.D.2d 529, 530 (2d Dept. 1990).

<sup>112</sup> Goldstein Interview 1 (Sept. 8, 1988), at 29-32.

<sup>113</sup> *Id.* at 31-34.

demonstrated by placing his mouth around the child's penis.<sup>114</sup> According to his statements to police, Goldstein was shocked.<sup>115</sup>

Goldstein was able to give detailed descriptions of other events. Late in the interview process, he admitted that, contrary to his prior statements, he had actually met Jesse early in 1986, but kept this fact to himself because during that time, Jesse had forced him into a homosexual relationship, which Goldstein found intensely embarrassing.<sup>116</sup> When police asked Goldstein specific questions about who he had helped Jesse abuse, when, and what acts had been performed on the victims, Goldstein sometimes could remember specific details. On other occasions he could not, and asked police for prompts, or specific details about the acts being alleged. Police obliged, and would sometimes read portions of statements before Goldstein would admit or deny his involvement. Goldstein attributed his lack of memory in these cases to his drug use, such as acid and marijuana, and to memories he was working through with his therapist.

All told, six victims implicated Goldstein in criminal sexual activity, but only four of those eventually testified against him before a grand jury.<sup>117</sup> Had Jesse Friedman proceeded to trial, the terms of Goldstein's cooperation agreement with police would have obligated him to testify truthfully against Jesse Friedman.

#### 4. Media Coverage Subsequent to the Second Indictment

News outlets reported extensively on Arnold's plea bargain<sup>118</sup> and sentencing.<sup>119</sup> *Newsday* also reported that Elaine Friedman was charged with obstruction of justice for attempting to punch Detective Sergeant Galasso during Arnold's earlier arrest.<sup>120</sup> Thereafter, the case largely disappeared from the headlines. Even the arrest of a third adult, Ross Goldstein, on June 23, 1988—discussed above—attracted few news

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<sup>114</sup> *Id.* at 35-38.

<sup>115</sup> *Id.* at 38-41.

<sup>116</sup> Goldstein Interview 4 (Oct. 27, 1988), at 4-7. His prior interviews with police had only alluded to this relationship. *See, e.g.*, Goldstein Interview 1 (Sept. 8, 1988), at 26-28.

<sup>117</sup> Witnesses 3, 5, 7, 11, 15, and 17. No charges resulted from Witnesses [REDACTED] and [REDACTED].

<sup>118</sup> *Newsday* first reported the date that the plea would take place. *Long Island Agenda*, *NEWSDAY*, Mar. 21, 1988, 1988 WLNR 186596. For reports of the proceeding itself, *see* Robert Weddle, *Molester Teacher Jeered*, *N.Y. POST.*, Mar. 26, 1988; Alvin E. Bessent, *Teacher Guilty of Sex Crimes in Plea Bargain, Admits Sodomizing Boys in Great Neck Home*, *NEWSDAY*, Mar. 26, 1988, 1988 WLNR 178928; Michael Hanrahan & Alton Slagle, *School Operator Admits His Guilt in Sex Abuse Case*, *N.Y. DAILY NEWS*, Mar. 28, 1988; Arnold Abrams, *Child-Sex Convict: I'm Sorry, Judge Says No to Treatment Bid*, *NEWSDAY*, Mar. 29, 1988, 1988 WLNR 150866; .

<sup>119</sup> *Prison Term in Abuse of Boys*, *N.Y. TIMES*, May 13, 1988; Alvin E. Bessent, *Teacher Sentenced in Sodomy*, *NEWSDAY*, May 14, 1988, 1988 WLNR 149296; A. Anthony Miller, *Arnold Friedman is Sentenced*, *GREAT NECK RECORD*, May 17, 1988; *see also* Ruben Rosario, *10-Year Sentence for Child Sex*, *N.Y. DAILY NEWS*, date unavailable; Philip Messing, *Sex Attack Teacher Gets Prison for Kid Porn Rap*, *N.Y. POST*, date unavailable.

<sup>120</sup> Alvin E. Bessent, *Sex-Case Figure's Spouse Charged*, *NEWSDAY*, Mar. 30, 1988, 1988 WLNR 162394; *see also* Alvin E. Bessent, *Probation, Fine for 'Swing' at Cop*, *NEWSDAY*, Oct. 21, 1988, 1988 WLNR 185547.

reports.<sup>121</sup> Only three *Newsday* articles were found discussing the substance of the third indictment itself: two discussing the document,<sup>122</sup> and the other describing Jesse's guilty plea.<sup>123</sup> Though the plea and sentencing proceedings for Goldstein and Jesse Friedman both drew considerable commentary, the case had by that time concluded.<sup>124</sup>

On February 11, 1988, Judge Boklan permitted television cameras in her courtroom to film the proceedings, "for arraignment purposes only."<sup>125</sup> In her order, Judge Boklan stated that "a voir dire of the jury would insure against any prejudice that would result from increased publicity." Judge Boklan also noted further cautionary steps she had taken, including "assurances from news media applicants" that the audience would not be filmed, that "outbursts" from the audience would not be broadcast, and that "nothing lewd or scandalous" would occur during the arraignment proceeding, "other than the nature of the charges alleged."<sup>126</sup>

### **I. Third Indictment (Nov. 7, 1988)**

Armed with corroborating testimony from Ross Goldstein, and facts demonstrating additional criminal activity, the prosecution sought, and a grand jury returned, a third indictment. This document excluded Arnold Friedman, but included a substantial number of charges against Goldstein, and reflected the decision to charge crimes based on new evidence uncovered after the issuance of the second indictment. No count of the indictment was sustained by Goldstein's testimony alone. Rather, his testimony served only to corroborate other witness accounts.

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<sup>121</sup> See Bill Van Haintze and Alvin E. Bessent, *New Arrests in Child-Sex Case*, *NEWSDAY*, June 23, 1988, 1988 WLNR 176418 and Alvin E. Bessent, *Teen Faces 37 New Sex Charges*, *NEWSDAY*, June 24, 1988, 1988 WLNR 195422; see also A. Anthony Miller, *More Charges and Defendants in Friedman Case*, *GREAT NECK RECORD*, June 30, 1988.

<sup>122</sup> Alvin E. Bessent, *Child-Sex Case Expanded, Son of Great Neck Computer Teacher Charged with 198 New Counts*, *NEWSDAY*, Nov. 16, 1988, 1988 WLNR 166292. Another article on the same day discussed the case only very generally. *Youths Face New Counts in Sex-Abuse Case*, *NEWSDAY*, Nov. 16, 1988, 1988 WLNR 1319633

<sup>123</sup> Alvin E. Bessent, *Boys' Sex Abuse Admitted, Great Neck Teen to Get 6-18 Years in Plea Bargain*, *NEWSDAY*, Dec. 21, 1988, 1988 WLNR 158550.

<sup>124</sup> For Ross Goldstein, see Alvin E. Bessent, *Teen Admits Guilt in Sodomy Cases*, *NEWSDAY*, Mar. 23, 1989, 1989 WLNR 232736; Shirley E. Perlman, *Prison Term for Teen in Abuse Case*, *NEWSDAY*, May 4, 1989, 1989 WLNR 215976. For Jesse Friedman, see *Long Island Agenda*, *NEWSDAY*, Jan. 23, 1989, 1989 WLNR 178234; Alvin E. Bessent, *Teen Gets 6-18 Years for Child Sex Abuse*, *NEWSDAY*, Jan. 25, 1989, 1989 WLNR 224571. A fifth article noted that police were still looking for the pornographic pictures Arnold and Jesse were accused of creating. Alvin E. Bessent, *Dragnet Out for Porn Photos: Police Hunt Missing Items in Probe of Friedman Child-Sex Case*, *NEWSDAY*, Feb. 8, 1989, 1988 WLNR 185547.

<sup>125</sup> See A390-91, Order, Feb. 11, 1988. She would issue a similar order prior to the third indictment. A392-93, Order, Nov. 17, 1988.

<sup>126</sup> Chief Judge Lippman of the New York Court of Appeals has recently called for wider media coverage of court proceedings, arguing that the public "have a right to know" about the judicial process. *N.Y. Court Of Appeals Chief Judge Calls For Return Of Cameras To Courts*, *CBS NEW YORK*, Feb. 16, 2013, <http://newyork.cbslocal.com/2013/02/16/n-y-court-of-appeals-chief-judge-calls-for-return-of-cameras-to-courts/>.

Seven children testified before the grand jury in support of this indictment. Of them, three had previously testified against either Friedman.<sup>127</sup> However, it is believed that none of the remaining four were “new contacts”—all were known to the police by December 17, 1987—and at least two had already provided police with formal statements. The charges against Jesse Friedman break down as follows:

|   | <b>First Ind.</b><br>Dec. 7, 1987 | <b>Second Ind.</b><br>Feb. 1, 1988 | <b>Third Ind.</b><br>Nov. 7, 1988 |
|---|-----------------------------------|------------------------------------|-----------------------------------|
| <b>Sodomy in the First Degree</b>                 | 0                                 | 6                                  | 126                               |
| <b>Sodomy in the Second Degree</b>                | 0                                 | 0                                  | 1                                 |
| <b>Attempted Sexual Abuse in the First Degree</b> | 0                                 | 1                                  | 0                                 |
| <b>Sexual Abuse in the First Degree</b>           | 3                                 | 10                                 | 9                                 |
| <b>Sexual Abuse in the Second Degree</b>          | 0                                 | 0                                  | 1                                 |
| <b>Endangering the Welfare of a Child</b>         | 5                                 | 19                                 | 52                                |
| <b>Use of a Child in a Sexual Performance</b>     | 0                                 | 0                                  | 9                                 |

The third indictment was much broader than the preceding two, and many more distinct acts of sodomy were charged. However, the increase is not as steep or startling as the number of counts might suggest. Each charge of sodomy, for example, does not correspond to an independent act of forcible anal penetration. This is so for several reasons: as explained above,<sup>128</sup> first degree “sodomy” in 1987, or the commission of a “criminal sexual act” today, does not require proof of actual penetration, but only the touch of a penis to the victim’s mouth or anus (or vice versa).

Second, some singular criminal acts led to two charges. For example, A.D.A. Joseph Onorato often charged a single act of sodomy twice, on the basis of two separate

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<sup>127</sup> Those four are [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. Of these, the latter two gave statements before December 17, 1987.

<sup>128</sup> See note 85, *supra*.

theories of the crime's commission (one compulsory, the other statutory, based on the victim being less than eleven years old). The crime of sodomy may be committed in several manners under governing law,<sup>129</sup> such that charging the crime under dual theories violates no constitutional rule, and is, in fact, standard prosecutorial practice.<sup>130</sup>

Additionally, a number of counts are attributable to a theory of accomplice liability. In several cases, for example, Jesse Friedman and Goldstein were charged for helping one another perform an act on a child.<sup>131</sup> In such cases, one person would have been charged for actually sodomizing the victim, and the other for restraining or otherwise abetting the act of sodomy. Therefore, in some of the charges, Jesse Friedman was not the principal actor.

Because sodomy in 1987 required only the touch of penis to anus *or* mouth, it does not follow that each underlying act of sodomy (let alone each charge) necessarily entailed violent anal penetration, or resulted in injury. Rather, some counts may have represented the touch of penis to anus, or mouth, as part of a "game," without actual penetration.<sup>132</sup> For example, though some counts allege that Jesse Friedman or Goldstein committed sodomy by forcing<sup>133</sup> a victim to sodomize *them*, the implication is only that the perpetrator forced the child to *touch* his own penis to the perpetrator's anus, or the child's mouth to the perpetrator's penis.<sup>134</sup> Conduct alleged in the third indictment, therefore, was neither factually impossible, nor necessarily implausible. Even so, the third indictment substantially eclipsed the preceding two in the number of charges, and introduced additional criminal acts, as well as fact patterns that resulted in multiplying charges.

## **J. Jesse Friedman's Guilty Plea**

Jesse continued to maintain his innocence. In family discussions, he spoke forcefully about his desire to bring his case to trial and confront each witness in sequence. Family members expressed their belief that a fair trial for Jesse would have been impossible but for Arnold's guilty plea. Both brothers, Seth and David, expressed doubt

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<sup>129</sup> See N.Y. Penal Law § 130.50.

<sup>130</sup> This rule accords with the doctrine of "multiplicity," and with established law permitting conviction on similar counts provided that each conviction requires proof of at least one distinct material point. See *Blockburger v. United States*, 284 U.S. 299, 304 (1932); see also *People v. Kindlon*, 217 A.D.2d 793, 795 (3d Dept. 1995) ("An indictment is not multiplicitous if each count requires proof of an additional fact that the other does not."). In any event, if convicted of committing the same act of sodomy in several different ways, Jesse Friedman could not have received consecutive punishment for those acts. See N.Y. PENAL LAW 70.25(2).

<sup>131</sup> See N.Y. PENAL LAW § 20.00.

<sup>132</sup> Debbie Nathan, a paid consultant for and participant in *Capturing the Friedmans*, assumed otherwise in the film, and in her published works. See Debbie Nathan, *Complex Prosecution*, THE VILLAGE VOICE, May 20, 2003, available at <http://www.villagevoice.com/2003-05-20/news/complex-persecution>.

<sup>133</sup> "Force" here refers to either physical coercion, or verbal threat.

<sup>134</sup> Therefore, the charge need not be read to claim that the victim accosted, and then forcibly penetrated, a "strapping teenager[] twice his age," as one of Friedman's advocates has suggested. De Becker & Horowitz, *supra* note 13, at 16.

that a jury would believe Jesse if he stood trial next to a man, his father, who had traded in child pornography.<sup>135</sup> The family and their attorneys also considered the possibility of an *Alford* plea, but there is no evidence that this option was discussed with either the prosecution or the judge.<sup>136</sup> Arnold would later claim that he pled guilty only to spare Jesse that difficulty, and to give him a fair chance at trial.

David Friedman appeared to question Jesse's innocence for the first time after Arnold's counsel, Jerry Bernstein, told the family that Arnold's admissions in the close-out interview tracked precisely with police accounts of abuse.<sup>137</sup> But, he managed to convince himself anew of his father's innocence.<sup>138</sup> At least one contemporaneous letter also shows that Elaine Friedman believed Jesse should simply plead guilty.<sup>139</sup>

#### 1. Spring 1988: Jesse Hires Attorney Peter Panaro

David and Jesse remained committed to proving Jesse's innocence.<sup>140</sup> After Jesse came to believe that his lawyer, Douglas Krieger, thought that Jesse was actually guilty, Jesse began to aggressively seek out a new attorney willing to go to trial on a theory of complete innocence.<sup>141</sup> In recent conversations with the Review Team, Jesse claimed to have personally interviewed approximately twenty attorneys. Ultimately, sometime in June 1988, Jesse hired Massapequa criminal defense lawyer Peter Panaro.

Once retained, Panaro inherited an investigation already underway. Panaro told the Review Team that Jesse had already deduced the identities of the "Doe" victims. Deborah M. Broder, an assistant to Arnold Friedman's attorney, had already spoken to one witness who expressed a desire to assist Arnold Friedman. A report of that interview was found in Panaro's files.<sup>142</sup> The Friedman family itself was also actively involved in

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<sup>135</sup> Audio recorded discussion between Arnold, David, Elaine, Jesse, and Seth Friedman (Mar. 24, 1988), preserved as a transcript of "Tape 6, Disk 8," tracks 1 and 2.

<sup>136</sup> The Second Circuit suggested that Panaro may have been under the misimpression that he could not allow Jesse to plead guilty unless he, Panaro, was actually convinced of Jesse's guilt. See A374, transcript of meeting between Peter Panaro and Jesse Friedman (Dec. 20, 1988) ("[Y]ou will not be permitted to plead guilty unless you are, in fact, guilty."). In its opinion, the Second Circuit observed in *dicta* that such an admission of guilt was unnecessary, given Supreme Court precedent permitting defendants to plead guilty without acknowledging their culpability. *Friedman*, 618 F.3d at 150 n.1 (citing *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970)). While such "*Alford*" pleas (also known in New York as *Serrano* pleas, 15 N.Y.2d 304 (1964)) are legally cognizable, they are uncommon, and it is inconceivable that any district attorney would have offered, and a judge accepted, such a plea in a case of this gravity, especially considering the number and age of Jesse's victims, and the nature of the charges. It is more likely that Panaro believed an *Alford* plea to be unrealistic in this case.

<sup>137</sup> A426-28, David Friedman's Personal Journal, excerpt 6.

<sup>138</sup> *Id.*

<sup>139</sup> A433, at excerpt 8; see also A477-78, letter from Elaine Friedman to Peter Panaro (undated). Note that the letter was found and transcribed by Jesse.

<sup>140</sup> A433, at excerpt 8.

<sup>141</sup> A303-04, letter from Jesse Friedman to William Kunstler, Esq. (May 6, 1988) ("My lawyer [Douglas Krieger] believes I am guilty and I am not.").

<sup>142</sup> A305-06, memorandum from Deborah M. Broder to File (Jan. 26, 1988).

preparing a defense for Jesse. By his brother David's account, this was no easy task. Non-complainants proved entirely unwilling to speak with the Friedman family:

*The other kids in class w/ no charges, aren't talking to us. They're yelling at us and not helping us. Also one said that if asked, [he] would say that something happened. This person wasn't approached by the police.*<sup>143</sup>

Panaro's files also contain a document listing witnesses who, the unidentified author believed, might be supportive of Jesse.<sup>144</sup> Records do not show when Panaro received this list, nor do they disclose how it was used, if at all. Notably, though, Arnold's handwritten additions to the document suggest that only one child was willing to speak in his defense, and even then, the child would only defend Arnold from the "serious charges."<sup>145</sup> And, there is no evidence to show whether Jesse Friedman, or Arnold, approached Witness 26 as a potential defense witness, even though Witness 26 presumably observed the class.

During this early phase, in an attempt to gain some background on the case, Panaro visited Arnold in a Wisconsin federal prison. During this meeting, Arnold confessed to abusing children at the family vacation home in Wading River, New York. More disturbing still, Arnold asked to change interview tables because he was "excited" by seeing a nearby father bouncing a child on his lap. (The latter was reported in *Capturing the Friedmans*, and also repeated in interviews with the Review Team.<sup>146</sup>)

## 2. Autumn 1988: Panaro Retains Psychologists and Other Experts

Panaro enlisted expert witnesses to examine Jesse and evaluate his mental state. One such expert was Dr. David Pogge, a psychiatrist and a specialist studying the psychopathology of teenage sex offenders. After Jesse Friedman provided a waiver, Dr. Pogge sat with the Review Team to discuss the steps he took in 1988 to evaluate Jesse Friedman. Today, Dr. Pogge is the Director of Psychology and head of the Psychological Assessment Service at Four Winds Hospital, a provider of in-patient psychiatric treatments for children, adolescents, and adults. At the time of the original case, Dr. Pogge was one of the first to treat sexual abuse offenders, and was recruited by North Shore Hospital in Manhasset, New York, for his expertise in that field. While there, he was not involved in the evaluation or treatment of any of the victims of Arnold or Jesse Friedman.

Based on this expertise, Panaro retained Dr. Pogge to evaluate whether Jesse's personality suggested that he was capable of committing the crimes charged. To guide this assessment, Dr. Pogge drew questions and components from several distinct existing testing regimes to capture relevant information about Jesse Friedman. Ultimately, Dr.

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<sup>143</sup> A419, at excerpt 4 (emphasis in original).

<sup>144</sup> A301-02, "Potential Witness List."

<sup>145</sup> *Id.*

<sup>146</sup> A226.



Pogge's conclusions resulted from the application of his own judgment and expertise to the results produced by these tests. The doctor did not simply restate the results of any one regime.<sup>147</sup> No one psychological protocol dictated his findings.

Together, these tests led Dr. Pogge to classify Jesse as a "psychopathic deviant" who was "self-centered, manipulative, egocentric, and capable of breaking the law." Dr. Pogge stated that the results showed Jesse to be "narcissistic, antisocial, passive aggressive, badly behaved, not a good citizen, and drug-dependent." Similarly, Jesse provided two "reflection" responses to a Rorschach test, an uncommon result suggesting that Jesse believed "he [was] better than other people," and was extremely "egocentric."<sup>148</sup> According to Panaro's notes, Dr. Pogge further described Jesse as a "psychopath" and a "pansexual," and acknowledged that Jesse was, by his own words, a "very heav[y] drug user."<sup>149</sup> Dr. Pogge also concluded that Jesse's personality was consistent with someone who was capable of committing the crimes with which he was charged. As Panaro's contemporaneous notes of his conversation with Dr. Pogge summarized, "Jesse believes it didn't occur or, that if it did occur, it's not really important," because "there is no victim."<sup>150</sup> Panaro expanded on this assessment in a recent interview with the Review Team. He said that Pogge had told him that Jesse lies all the time, and derives gratification from fooling others. It was almost definite, Panaro said Pogge had told him, that Jesse *had* been involved in deviant sexual behavior with his father, and that Jesse's real problem was his inability to admit that his father was guilty.

Another doctor, listed only as "Dr. Feldman" in Panaro's notes, stated that in his opinion Jesse was "abused by his father," exhibited tendencies towards "sadism," and "has been an exhibitionist."<sup>151</sup> Like Dr. Pogge, Dr. Feldman reported that "Jesse feels he is being persecuted and that if there are sexual acts, there are NO VICTIMS b[ecause] they participated 'voluntarily.'"<sup>152</sup> Jesse himself would later make similar claims, in an exchange recorded in *Capturing the Friedmans*:

**Seth:**     *You a child molester, Jesse?*

**Jesse:**    *Nope.*

**David:**   *Did you ever do it?*

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<sup>147</sup> Dr. Pogge described this process in conversations with the Review Team. Recently, Ron Kuby wrote a letter to the District Attorney's office in which he attempted to discredit Dr. Pogge's findings, nearly twenty-five years after the fact, by claiming that Pogge used inappropriate testing protocols, and that he should instead have used different, far superior tests. *See* letter from Ronald L. Kuby to Madeline Singas, Chief A.D.A., NCDA (Mar. 5, 2013). But Kuby's preferred test did not exist in 1988. And, Dr. Pogge did not simply apply then-existing testing regimes. Instead, he used the testing regimes as guides for his own, independent analysis.

<sup>148</sup> These notes do not appear in Panaro's original files; rather, they were obtained directly from Dr. Pogge's notes, which he discussed with members of the District Attorney's staff during an interview about the case. This interview was obtained pursuant to Jesse Friedman's express permission.

<sup>149</sup> A330-31, handwritten notes, dated Nov. 3, 1988 (emphasis in original).

<sup>150</sup> *Id.*

<sup>151</sup> A307-27, handwritten notes, dated Nov. 21, 1988.

<sup>152</sup> *Id.* (emphasis in original).

**Jesse:** *Never touched a kid.*  
**David:** *Did you do what they said you did?*  
**Jesse:** *I never touched a kid. I never saw my father touch a kid.*  
**David:** *Good.*  
**Seth:** *Yeah, but still, you must have done it.*  
**David:** *Yeah, but surely something must have happened. It must, something.*  
**Seth:** *Because the police say it's true. Okay, you never touched a kid, right?*  
**Jesse:** *Well, if something happened, it didn't happen while I was there.*  
**Seth:** *But still, the police tell the truth, right? I mean the police—*  
**Jesse:** *And it was a minimal incident because the kid didn't say anything about it.*  
**Seth:** *But the police, how could they be lying?*  
**Jesse:** *Shut up, Seth.*<sup>153</sup>

Panaro asked Dr. Pogge and Dr. Feldman “NOT to give me [Panaro] a written report” of their findings, “due to the extreme negative result of the psychiatric report.”<sup>154</sup> The results dismayed David Friedman: Jesse “did terrible,” he wrote, “at a psychological profile by the top guy in the country.”<sup>155</sup>

Jesse twice sat for a polygraph examination. The first was conducted at the request of Jesse’s attorney Douglas Krieger. The results are unknown. The next was administered at Panaro’s request over two days by Dick Arther, a nationally-known polygraph expert.<sup>156</sup> According to Panaro, the result of this test “was that Jesse Friedman was not truthful.”<sup>157</sup> David, too, described Jesse as having “failed horribly.”<sup>158</sup> According to David, Jesse also sat for and failed “terribly” a penile plethysmograph test,<sup>159</sup> an examination in which an instrument is used to measure the subject’s penile response

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<sup>153</sup> A253-55.

<sup>154</sup> A330-31.

<sup>155</sup> A435-36, excerpt 9.

<sup>156</sup> A342-43, polygraph authorization forms, dated Oct. 18 and 20, 1988.

<sup>157</sup> A600-01, Letter from Peter Panaro, Esq., to Richard O. Arther (June 28, 2002).

<sup>158</sup> A439, excerpt 10 (emphasis in original). In a handwritten note dated December 18, 1988, David retracted this analysis: “I now think he passed but Panaro told us he failed, to get J[esse] to ‘admit’ guilt.” *Id.* Others have questioned the results of this polygraph: years later, the team responsible for *Capturing the Friedmans* would seek a “second opinion” of Jesse’s test results, from an attorney friend who was, according to filmmaker Andrew Jarecki, “familiar with polygraphs.” This friend apparently concluded that the test was “inconclusive.” The basis for this conclusion is not known.

<sup>159</sup> A435-36, excerpt 9. Though Jesse denies it today, according to David’s journal, Jesse actually acknowledged that he took the test, but explained away his failure. *Id.* (“Jesse says that any question about sodomy, etc., got a shocked response so he couldn’t be neutral through the whole thing...” (ellipsis in original)).

while he is exposed to various visual stimuli.<sup>160</sup> The reliability of these tests has been questioned,<sup>161</sup> and Jesse today denies that he took such a test.

### 3. Winter 1988: Jesse Explores His Options

Panaro ultimately met with a non-complainant, Witness 28, and his mother on November 21, 1988.<sup>162</sup> Witness 28 had previously been identified by David Friedman as a sympathetic witness, though David expressed some doubt about how much he would help the case. Witness 28 was, David wrote in March 1988, an “oddball,” and “he wasn’t in any classes in which there are charges.”<sup>163</sup>

At his meeting with Witness 28, according to Panaro’s notes, Witness 28’s mother showed Panaro a videotaped recording of Detectives Hatch and Jones interviewing her son (the “Meyers Tape”).<sup>164</sup> In the video, according to Panaro’s notes, both detectives stated that Arnold Friedman “admitted . . . in open court” to abusing children who, in turn, said that her son had been victimized by Arnold.<sup>165</sup> The detectives impressed upon her son that it was futile to deny that he was abused, since “Arnold was under no obligation to admit” to abuse, but did so anyway; and because Arnold would “not be charged with any other additional charges.”<sup>166</sup> Instead, the detectives stated that they were primarily interested in “get[ting] psychological help for the children.”<sup>167</sup> According to Panaro’s transcript of the tape, when the child denied any abuse, the detectives called him a “wise guy” (possibly in response to comments transcribed as “inaudible”),<sup>168</sup> and dismissed as unbelievable the possibility that “it happened to everyone else but not to you.”<sup>169</sup> The detectives did not mention either Jesse Friedman or Goldstein, and the interview concluded without any statement being taken. (The Meyers Tape is discussed in Section III.A.5, *infra*.)

During this time, too, Jesse remained free on bail, and continued shooting family videos. In one such video, Jesse and David Friedman drove to a supermarket minutes away from their home. While shopping, the two wandered the market, and Jesse pretended to “interview” customers by shoving a batch of scallions—a pretend microphone—in each interviewee’s face. Among his subjects were several young boys,

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<sup>160</sup> Jason R. Odeschoo, *Of Penology and Perversity: the Use of Penile Plethysmography on Convicted Child Sex Offenders*, 14 TEMP. POL. & CIV. RTS. L. REV. 1, 8-9 (2004).

<sup>161</sup> *Id.* at 10-14; *see also, e.g., Decker v. Hogan*, 09-CV-0239, 2009 WL 3165830, at \*7 (Sept. 28, 2009). Nonetheless, they remain widely in use. *See Rachel Aviv, The Science of Sex Abuse*, THE NEW YORKER (Jan. 14, 2013).

<sup>162</sup> *See* A305-06.

<sup>163</sup> A419, excerpt 4.

<sup>164</sup> In his original handwritten notes, Panaro appeared to believe that Detective Sergeant Galasso also was present. *See* A308.

<sup>165</sup> Citation here is to the “transcript” of the tape prepared for litigation. A328.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> A329.

<sup>169</sup> A328.

each of whom greeted the two Friedmans normally, if shyly. The children were in the presence of their parents, who did not react to the Friedmans' presence. Otherwise the two interacted normally with everyone they met. As they left, Jesse and David mocked the supermarket's shopping cart attendee, who appeared to be mentally challenged.

It is apparent from the video that neither David nor Jesse were recognized by the shoppers. Based on subjects of conversation—several “interviews” mention an upcoming presidential election involving George H. W. Bush—this video can be dated to Fall 1988. If that date is correct, the brothers' interactions with members of the Great Neck community belie Jesse's later claim that, in the run-up to his guilty plea, he was a “prisoner in [his] own home” due to the mass hysteria surrounding the case.

Panaro continued to prepare for trial. He obtained from A.D.A. Joseph Onorato full disclosure of each complainant's true name, though A.D.A. Onorato carefully noted that Panaro had received the information long before,<sup>170</sup> and as Panaro told the Review Team, Jesse had long since figured out the victims' identities. Ultimately though, Jesse's decision about going to trial changed, and rapidly. By November 9, 1988, Panaro openly suggested that a limited guilty plea was Jesse's best option,<sup>171</sup> and Jesse too noted, in a letter to his father, that “at one year apeace, [sic]” a conviction on even a few minor charges “would add up too quickly,” and carry serious jail time even if otherwise “the trial goes great.”<sup>172</sup> Jesse also worried, he said, about the Judge's promise to impose “harsh consecutive time.”<sup>173</sup>

The decision to plead guilty followed Jesse's careful consultation with his attorney. Indeed, Panaro recorded and preserved a forty page transcript of an exhaustive meeting between him, Elaine, and Jesse Friedman, in which Panaro confronted Jesse with his options, and probed the reasons for Jesse's change of heart. In the interview, Panaro stated and Jesse agreed that Panaro had discussed several defense strategies with Jesse and with other lawyers,<sup>174</sup> met with multiple psychiatrists in an attempt to formulate a defense strategy based on Jesse's mental state,<sup>175</sup> and further confirmed that he would try the case for no additional fee.<sup>176</sup> Panaro then elicited the admission that Jesse simply did not want to face his accusers in open court:

**PP:** *It is because of those reasons plus the fact that there are approximately fourteen children in all who could testify against you at this point, [Goldstein], and there have been allegations that perhaps [unprosecuted accomplices] may be subpoenaed to*

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<sup>170</sup> A344-45, letter from A.D.A. Joseph Onorato to Peter Panaro, Esq. (Nov. 30, 1988).

<sup>171</sup> See A435-36, excerpt 9.

<sup>172</sup> See A442, letter from Jesse Friedman to Arnold Friedman (“11:40 PM”).

<sup>173</sup> *Id.*

<sup>174</sup> A360-62.

<sup>175</sup> A362-64.

<sup>176</sup> A375.

*trial, that all of these factors have induced you to plead guilty. Correct?*

**JF:** *Correct.*<sup>177</sup>

Panaro further informed Jesse, at length, about his right to appeal his guilty plea,<sup>178</sup> and he confirmed that Jesse had already met with highly-regarded appellate lawyers for that purpose.<sup>179</sup> Panaro also detailed the extent of his near-daily conversations with Jesse and other members of the Friedman family throughout the case's history.<sup>180</sup> Thereafter, Jesse admitted his guilt to Panaro:<sup>181</sup>

**PP:** *And are you pleading guilty because you are in fact guilty, and for no other reason[?]*

**JF:** *Yes, Peter. That is correct.*<sup>182</sup>

Jesse's mother Elaine Friedman also stated that she was "in support of Jesse's plea of guilty" because she was truly "convinced of Jesse's guilt."<sup>183</sup> Later, during Jesse's imprisonment, she would change her mind. In a recent interview with the Review Team Elaine stated that she "would stake her life on [Jesse's] innocence."

#### 4. Late Winter 1988-89: Plea and Sentencing

On December 20, 1988, in Nassau County Court, Jesse Friedman pled guilty to seventeen counts of sodomy, and eight additional counts related to the abuse or exploitation of children, in full satisfaction of the three indictments.<sup>184</sup> His plea bargain included counts from all three indictments. With the plea done, Jesse thanked Scott Banks, Judge Abbey Boklan's law secretary.<sup>185</sup>

Because Jesse took no direct appeal, his plea allocution was never transcribed from the stenographer's shorthand notes.<sup>186</sup> Based on then-prevailing law and practice, though, Jesse would have been required to acknowledge the details of his crimes, and

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<sup>177</sup> A380-81.

<sup>178</sup> A386.

<sup>179</sup> A359.

<sup>180</sup> A357-58.

<sup>181</sup> Panaro also recorded Jesse's admission in an affidavit submitted in the course of Jesse's habeas litigation. Affidavit of Peter Panaro in Support of Motion to Vacate Conviction, at ¶ 13; *see also Friedman*, 618 F.3d at 150 (noting the same).

<sup>182</sup> A378.

<sup>183</sup> A387.

<sup>184</sup> *Friedman*, 618 F.3d at 150.

<sup>185</sup> Mr. Banks related this occurrence during an interview with the Review Team.

<sup>186</sup> *Friedman*, 618 F.3d at 150 n.2. The stenographer has also since passed away. No other source was able to provide a copy of the plea minutes, including local news media believed to have filmed, or taken notes on, the plea colloquy.

swear that his plea was entered knowingly, voluntarily, and in the absence of any coercion.<sup>187</sup> With this admission, the investigation against Jesse closed.

Jesse continued to receive counseling and legal advice after his guilty plea. For example, Judge Abbey Boklan required that, before pleading guilty, Jesse speak with a psychiatrist. Assigned to the task, Dr. Daniel Schwartz later recalled to the Review Team that Jesse definitely spoke to him about how he was abused by his father, and how Jesse took an active role in abusing children.

Panaro attempted to cast Jesse as still another of his father's victims, arguing that Jesse was as much a victim as the complainants. He pursued other opportunities for leniency as well. According to a letter written by Panaro after Jesse's guilty plea, "prior to his incarceration," Jesse flew to Wisconsin to visit his father, and to ask him to turn over any pornographic pictures he may have produced of his students,<sup>188</sup> in the apparent hope that some charges would be dropped if he cooperated, or appeared to do so. The effort was unavailing, as Arnold could not produce any of these pictures. However, Panaro reported to the prosecutor, A.D.A. Onorato, that Jesse *could* speak to "the number of photographs that he knows were taken, when they were taken, by whom they were taken, etc.," but not their current whereabouts.<sup>189</sup>

Immediately prior to his sentencing, many victims' families reached out to Judge Boklan, with the majority expressing dissatisfaction with the leniency of the likely sentence range of six to eighteen years. Though the minutes of sentencing were never transcribed, Judge Boklan's personal notes, which she read to the *Capturing the Friedmans* filmmaking team, indicate that she read some such notes into the record:

*The children you have abused are suffering terribly. They are exhibiting sleeplessness, bedwetting, nightmares, stuttering, hair loss, a decline in school work, separation anxiety, and an overwhelming sense of fear. Several children in fact sleep with weapons, bats, and sticks by their beds.*<sup>190</sup>

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<sup>187</sup> See, e.g., *Santobello v. New York*, 404 U.S. 257, 261 (1971). In the only reported cases to squarely address the subject, the Second Department has twice sustained the validity of pleas entered before Judge Boklan, finding no defect in her ability to fairly admonish defendants of the importance of entering a plea of guilty truthfully. See *People v. Ochoa*, 179 A.D.2d 689, 689-90 (2d Dept. 1992) (denying motion to withdraw plea of guilty, based on integrity of plea colloquy conducted by Judge Boklan) and *People v. Reginio*, 168 A.D.2d 693, 694 (2d Dept. 1990) (same).

<sup>188</sup> See A347-48, letter from Peter Panaro, Esq., to A.D.A. Joseph Onorato (Feb. 27, 1989) (responding to A346). Arnold Friedman independently described the same encounter. A502-03, partial letter from Arnold to Jesse Friedman (Aug. 5, 1991).

<sup>189</sup> See A293.

<sup>190</sup> A697.

On January 24, 1989, Judge Boklan sentenced Jesse Friedman to six to eighteen years' imprisonment, and recommended to the parole board that he serve the full term.<sup>191</sup> Some video footage remains from this proceeding: in a segment that aired on *Dateline*, Jesse cried while addressing the court, blamed his father for not teaching him the difference between right and wrong, and wished that he could have done something to break the cycle of abuse. Jesse would later claim that he was crying only because Panaro had his hand on his shoulder.<sup>192</sup> Shortly after sentencing, Jesse wrote a letter to his brother that described the sentencing as "exhilarating," proclaiming, "I want a big article tomorrow!" He told his brother that "[his] dream of being a star, of having huge numbers of people listen and think about what [he] [has] to say, has come true."<sup>193</sup>

## **H. 1988–2001: From Jesse Friedman's Guilty Plea to Release**

### **1. Jesse Friedman Reaffirms His Guilt on National Television**

Just a month after his sentencing, while in Nassau County jail, Jesse appeared on *The Geraldo Rivera Show* and again admitted his guilt, this time to a national audience.<sup>194</sup> Arnold would later argue that the interview was done against Jesse's will,<sup>195</sup> and Jesse himself claimed that he appeared on the show because his attorney encouraged him to do so.<sup>196</sup> Both accounts are false. Jesse appeared on *Geraldo* of his own volition, and against the express advice of his counsel, Peter Panaro. As Jesse wrote, in a release that Panaro demanded from Jesse before he appeared on the show, Jesse was sitting for the interview "voluntarily," to "get [his] side of the story across to the media at any cost, even death."<sup>197</sup> (See statement, next page.)

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<sup>191</sup> Alvin E. Bessent, *Little Joy in Victory for Boys' Families*, NEWSDAY, Jan. 25, 1989, 1989 WLNR 219053

<sup>192</sup> A457, letter from Jesse Friedman to David Friedman (Jan. 30, 1989).

<sup>193</sup> A458. He added that it was a good thing that he "did not actually do any of that." *Id.*

<sup>194</sup> A newspaper article from that year listed *Geraldo* as the twelfth-highest rated program out of 111 in syndication. Gail Shister, *Geraldo to Cool Down the Sexual Themes*, HOUSTON CHRONICLE, Dec. 29, 1989.

<sup>195</sup> A562 ("His lawyer urged him to do this interview.").

<sup>196</sup> See A499, letter from Jesse Friedman to David Friedman (Jul. 18, 1989) ("What do I say to 'the public' to explain what I said on *Geraldo* and why. Thanks to Panaro's encouragement, I have completely ruined my credibility. How can I explain what I did?").

<sup>197</sup> See A463 statement dated Feb. 6, 1989.

Feb. 6, 1989

I, Jesse Friedman,  
do hereby consent, against  
the advice of my attorney,  
Peter Panaro, ESQ.,  
4216 Merrick Road, Massapequa,  
NY, 11758, that I will  
voluntarily appear on the Heraldo  
Riviera show knowing that the  
National Consequences could result  
in physical abuse, or even  
death, by inmates in prison  
who see me discussing this issue  
of child abuse & child  
pornography on national TV.

I do this because I  
want to get my side of  
the story across to the media  
at any cost, even death.

Feb. 6, 1989

Jesse Friedman  
JESSE FRIEDMAN



As Jesse explained in the interview, “[his] side of the story” was one in which he participated in the abuse of his father’s students, but only because Arnold forced him to do so. In the video, Jesse looks directly at Rivera and says:

*I fondled them. I was... forced to... pose in hundreds of photos for my father in all sorts of sexual positions with the kids. And the kids likewise with myself. Oral sex going both ways. I was forced to pose with my penis against their anus.*<sup>198</sup>

Jesse said that Arnold had begun to molest him at a young age. When Jesse eventually “realized what was going on,” and that Arnold’s behavior was not normal, he still could not stop it, because he was “scared” that if he tried to, he would “lose [his] father, which was the most important thing to [him] for most of [his] life.”<sup>199</sup> In a way, he said, he even liked it, because “it was some signs of affection, some signs of loving or caring in the world.”<sup>200</sup> “For most of my life,” Jesse said, Arnold “was the only person who ever loved me.”<sup>201</sup> Asked “[w]hy didn’t the kids ever tell?” Jesse replied simply: “the same reason I never told.”<sup>202</sup>

Jesse acknowledged Ross Goldstein’s participation, but said that his involvement was similarly involuntary: Goldstein happened to stumble into the class while Jesse was “fondling the kids,” who were “naked or half naked and [Arnold] was taking pictures.”<sup>203</sup> Describing the course of abuse, Jesse acknowledged that “there were times when we held computer class and there wasn’t abuse going on.”<sup>204</sup> He also explained that children were photographed, with images developed off-site by friends, “Jack” and “Arthur,” who possessed darkrooms.<sup>205</sup> Jesse also vividly described the threats he and his father would use to procure the children’s silence:

*I... I know my... my father had made vicious threats to the kids about... about burning down their homes and things like that and... I... re-established that with the kids that I... I thought it was completely possible that my father would actually burn down their homes or... or... or hunt down their parents or something like if... if they told what was going on.*<sup>206</sup>

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<sup>198</sup> A510-37, *Geraldo: Busting the Kiddy Porn Underground*, at 5-6 (Paramount television broadcast Feb. 23, 1989).

<sup>199</sup> A512.

<sup>200</sup> A519.

<sup>201</sup> A526.

<sup>202</sup> A514.

<sup>203</sup> A532.

<sup>204</sup> A514.

<sup>205</sup> A520-21.

<sup>206</sup> A515-16.

This confession echoes confidential statements made by numerous victims: that Jesse and Arnold would, together, threaten children into silence using violent and specific threats. Jesse's recollection of particular threats of arson tracks a statement made by one major complainant in December 1987, more than a year prior to the *Geraldo* interview, and repeated by a child during a 1989 interview:

*One 12-year-old boy was interviewed for this story in his own room. . . . "The threats made a pretty good impression," he said, glasses askew and eyes darting. He recalled the incident in which a boy's head was banged against the wall. "Tell and this will happen to you," he quoted the Friedmans as saying. He said they also threatened to kill his parents and burn his house if he told.*<sup>207</sup>

To his brothers, Jesse explained his appearance on the *Geraldo* show as a product of his desire for fame, both in its own right and as a way of convincing the world of his contrition. He also said that Geraldo Rivera had "lied" about the subject of the interview.<sup>208</sup> In a letter to Arnold Friedman, Howard Friedman, Arnold's younger brother, questioned this decision, asking why Jesse would admit his and his family's guilt on live television.<sup>209</sup>

Jesse approached an April 1989 interview with *Newsday* in similar fashion.<sup>210</sup> There, he described being abused by his father, saying that his "father began to visit his bedroom at night and fondle him," a tradition that then "escalated into sodomy."<sup>211</sup> Sitting in a jail cell, he proclaimed that he did not "miss" his "old life,"<sup>212</sup> and deliberately avoided any discussion of his own guilt or innocence.<sup>213</sup> Near simultaneously, Jesse wrote a contradictory "off the record" letter to the same *Newsday* reporter, in which he denied the entire account, saying he was innocent, and that it was not "even remotely true" that he had been sexually abused by Arnold.<sup>214</sup> It is not clear if this letter was ever sent, though it is likely.<sup>215</sup>

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<sup>207</sup> A913.

<sup>208</sup> A4683, letter from Jesse Friedman to David and Seth Friedman (Feb. 27, 1989).

<sup>209</sup> See A471-72, letter from Howard Friedman to Arnold Friedman (Mar. 1, 1989).

<sup>210</sup> See A483, letter from Jesse Friedman to Seth Friedman (Apr. 8, 1989).

<sup>211</sup> See A912.

<sup>212</sup> A914.

<sup>213</sup> See A483 ("Alvin told her how he asked me point blank, 'Did I do any of those things?' and that I completely avoided the question. This is true. I had not decided what I wanted to say at that time, now I have, I will not lie anymore. Peter was wrong.").

<sup>214</sup> See A474-77, letter from Jesse Friedman to Alvin Bissent (Apr. 8, 1989) (emphasis in original).

<sup>215</sup> The handwritten letter was found among Jesse's other correspondence. In another letter, Jesse asked his brother Seth to read it and, if he agreed that the letter should be sent, copy it before transmitting it. A481. An addendum to the same letter thanks Seth for "taking care of" the letter, and provides Bessent's address. The implication seems clear that Seth had agreed to send the letter to Bessent.

## 2. Goldstein's Guilty Plea

On March 22, 1989, consistent with his cooperation agreement, Goldstein pled guilty in Nassau County Court to three counts of sodomy, and one count of the use of a child in a sexual performance.<sup>216</sup> In satisfaction of the terms of the cooperation agreement, the prosecution recommended that Goldstein receive a six-month term of imprisonment, five years' probation, and Youthful Offender status, the latter requiring that all files related to his prosecution be sealed.

Before he pled guilty, however, Judge Boklan informed Goldstein that she was not inclined to grant Youthful Offender treatment. Nevertheless, despite this warning, Goldstein pled guilty. At his sentencing, Judge Boklan declined to sentence in accordance with the terms of the cooperation agreement. Instead, Judge Boklan sentenced Goldstein to serve two-to-six years in prison without a Youthful Offender adjudication. Goldstein appealed and was eventually adjudicated a Youthful Offender, and afforded a more lenient sentence, despite having already served almost fifteen months in jail, and was ultimately released.<sup>217</sup>

## 3. Arnold Friedman Considers Trying to Vacate his Guilty Plea

In an "Open Letter" that Arnold Friedman published on or about May 1990,<sup>218</sup> he vigorously challenged any correlation between the *possession* of child pornography and the actual *abuse* of children.<sup>219</sup> Arnold's autobiography, "My Story," written while in prison, similarly expanded on his attraction to child pornography, but presented it as a crutch he used to stave off any inappropriate interest in the boys he raised or taught.<sup>220</sup> According to Arnold, he only wavered once in adulthood, when he molested two children—one, the son of a close family friend—at the Friedmans' vacation house in Wading River,<sup>221</sup> and even then, he crossed the line only because the children "really seduced [him]."<sup>222</sup> However, he acknowledged to his brother, Howard, that he had sexually abused Howard when they were children.<sup>223</sup>

In a letter to Elaine, Arnold wrote that he intended to unwind the case's conclusion and use himself as a test case: he would retract his plea, go to trial, and if he won, convince Jesse to do the same.<sup>224</sup> But the family was not supportive, and no indication exists that any other member of the family considered Arnold's plan a serious one. Arnold's brother Howard actively questioned Arnold's protestations of innocence, and blamed Arnold for putting himself in a situation where, given his tendency towards

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<sup>216</sup> *Ross G.*, 163 A.D.2d at 529.

<sup>217</sup> *Id.* at 532.

<sup>218</sup> See Alvin E. Bessent, *Sex Offenders in Open Letter: We're Innocent*, NEWSDAY, 6, May 4, 1990.

<sup>219</sup> A553-55.

<sup>220</sup> A538-41.

<sup>221</sup> A539.

<sup>222</sup> See A484. This is a belief common to pedophiles.

<sup>223</sup> See A501, letter from Howard Friedman to Arnold Friedman (April 11, 1990).

<sup>224</sup> See A486, letter from Arnold to Elaine Friedman (May 19, 1989).

pedophilia, abuse became inevitable.<sup>225</sup> Howard also asked Arnold to explain a previous admission that he had made:

*I remember it so well—it was about 11:15 PM, and you and I were sitting in the den alone, holding hands, talking, talking, crying. You looked me in the eyes and squeezed my hand and said “Howie, please believe me, that I never molested the kids. I may have been a little free with my hands, I may have set them on my lap, I may have hugged them, I may have shown them pornographic material, but, I never, never, hurt them, screwed them, or anything like that.” I remember that conversation like I remember no other in my lifetime. So what the fuck is going on? Are you blocking the memory? Are you lying? Then? Now?*<sup>226</sup>

It is not known if any response to Howard’s letter was ever sent. In a later letter, sent to Jesse in 1991, Arnold questioned his own sanity.<sup>227</sup> Arnold died four years later while in prison, of heart failure related to a pre-existing condition. Some suspect that his death was a suicide, caused by a deliberate overdose of medication.<sup>228</sup>

#### 4. Jesse’s Prison Term

Once Jesse was transferred to prison in upstate New York, he began to deny his guilt. Despite this, neither Arnold nor Jesse Friedman ever filed a post-conviction motion until Jesse’s 2004 motion, filed nine years after Arnold Friedman’s death, and fifteen years after the start of Jesse’s prison term. However, while incarcerated, Jesse did retain private counsel to appeal a decision, and argue that he should receive credit for good behavior while incarcerated. Also while imprisoned, Jesse helped another inmate, a close friend of his, prepare his own appeal.

Jesse started his prison term at Clinton Correctional Facility. He immediately began meeting with psychiatrists as part of mandatory treatment, and by the first documented meeting, Jesse had begun to “den[y] his involvement in the crime.”<sup>229</sup> Another therapist concluded that Jesse had established substantial mental defenses, and deployed all of them to convince himself of his own innocence:

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<sup>225</sup> See A501.

<sup>226</sup> *Id.*

<sup>227</sup> See A502-03.

<sup>228</sup> Subsequent media coverage has asserted that Arnold’s death was a suicide. See, e.g., Sharon Waxman, *Victims Say Film on Molesters Distorts Facts*, N.Y. TIMES, Feb. 24, 2004. However, the Review Team has not been able to conclusively prove this fact, and David Friedman disputed the common assumption, saying that, though his father was afraid of going to state prison, and was indeed suicidal, from the circumstances of his prison cell, it seemed Arnold was not expecting to die.

<sup>229</sup> Interview notes by Stanley R. Berg, Jul. 25, 1989 (“[Jesse] has recognized the amount of time he must serve and he feels that he should not have to do it.”).

*Mr. Friedman has for all intents and purposes denied the responsibility for his crime. In his estimation he is an innocent victim of the system. . . . His defenses are very refined and he is able to use his intellect and highly polished social ability to slide by and look as though he is accomplishing something.*<sup>230</sup>

By 1995, Jesse had been transferred to Cossackie Correctional Facility, where he became involved in a number of disciplinary infractions. In one 2000 incident, Jesse was disciplined<sup>231</sup> for possessing a picture of two prepubescent children, one of whom is nude in the photo. The photograph is the work of Sally Mann, and it appeared in a 1992 issue of *Harper's Magazine*.<sup>232</sup> Jesse admitted that he tore the image from the magazine. Regardless of the academic debate concerning what does or does not constitute child pornography,<sup>233</sup> possession of the image violated the terms of Jesse's incarceration. When asked about this incident during an interview with the Review Team, Jesse was unable to explain it until his attorney Ronald Kubby offered that Jesse's possession of the picture was a political statement being made by a political prisoner. Jesse adopted this explanation.

In July 2000, just a few months later, Jesse again faced disciplinary action for writing and distributing three stories depicting lurid, violent, and disturbing sexual acts, including bestiality (forcing a woman to have sex with a dog), child incest, and rape.<sup>234</sup> All three stories are overlaid with strong overtones of sadism and control, with sexual pleasure secondary to dominance or revenge. In one story, Jesse describes an incestuous

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<sup>230</sup> Interview notes by William S. Burke, Dec. 1990.

<sup>231</sup> Inmate Misbehavior Report, Mar. 29, 2000. Jesse claims that as a result of this incident, he was subjected to solitary confinement for one year, but this is not correct. Jesse Friedman's inmate disciplinary history reports only that, following this incident, a hearing was held concerning this and a second, unrelated incident, and that as a result of that hearing he was subjected to three *months* in solitary confinement (referred to as "SHU," or, "Special Housing Unit"). Jesse appealed the sentence, and it was modified, but not before Jesse had already served the sentence. See Inmate Disciplinary History, Jesse Friedman (#89B0323). Prior to this sentence, Jesse had already served a total of 134 days in SHU for two unrelated disciplinary infractions. The inmate records office confirmed this interpretation with a member of the Review Team.

<sup>232</sup> See Sally Mann, *Untitled Photo*, HARPER'S, July 1992, at 28.

<sup>233</sup> Since the definition of child pornography is inherently subjective—a parent's photo of his child bathing may be sentimental, and nonpornographic, but its possession by a third party who does not know the child would raise suspicions—such context matters. See generally Amy Adler, *Inverting the First Amendment*, 149 U. PENN. L. REV. 921, 966-69 (2001) ("Although Mann has so far escaped prosecution, her work would appear to fit squarely within the definition of child pornography as courts have developed it.") (arguing further that Mann's work is protected speech) and Amy Adler, *The Perverse Law of Child Pornography*, 101 COLUMBIA L. REV. 209, 254-55 (2001) ("Whatever the law's success in stamping out the 'low-profile, clandestine industry' of kiddie porn, child pornography law has presided over a period in which the sexualized marketing of children has stepped into the light of day.") (using Mann's work as an example of profitable artistic expression that nonetheless approximates child pornography).

<sup>234</sup> See Inmate Misbehavior Report, Jul. 13, 2000.

relationship between three children—two girls and one boy—that their father discovers, and then gleefully joins.<sup>235</sup> That story ends with a caveat penned by Jesse:

*Note: Please DO NOT use this story as a reason to practice incest, or especially incest with minors! It could get you arrested! However, if you have any questions, comments, or suggestions about this entirely fictional story, please write to me.*<sup>236</sup>

After discovering the stories, Cossackie officials destroyed most copies. Both of these events occurred shortly before Jesse began to formally undergo sex offender rehabilitation therapy.<sup>237</sup>

Jesse was eventually moved back to Clinton Correctional Facility, where his therapists offered positive reports. Jesse had accepted his guilt<sup>238</sup> and described reservations about adjusting to life outside prison.<sup>239</sup> Jesse would later say he feigned acceptance to ensure his early release. Following his December 7, 2011 release, on January 7, 2002, Judge Boklan of the Nassau County Court adjudicated him a level three sex offender.<sup>240</sup>

## **II. Commencement, Scope, And Methods Of Review**

The following section tracks the development of this case from Jesse Friedman's final year in prison, through the start of this review.

### **A. Capturing the Friedmans**

When he first met Jesse Friedman—sometime around March 2001, according to Jesse—Andrew Jarecki was an aspiring filmmaker, planning a documentary film about children's clowns serving upper-class families in New York City. He switched course after one possible subject for the film, Jesse Friedman's brother David, hinted at a secret in his family's past. David introduced Jarecki's team to Jesse and, with Jesse's assistance, they began preparing a different film. Though the project had already changed course, the filmmakers continued to tell many interviewees that the focus of the film remained on Manhattan children's entertainers.<sup>241</sup>

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<sup>235</sup> See *id.*

<sup>236</sup> *Id.*

<sup>237</sup> See sex offender counseling program referral/consent, Jun. 12, 2001.

<sup>238</sup> See memorandum re: initial psychological assessment, Dec. 14, 2000.

<sup>239</sup> See memorandum re: psychological progress note, Jul. 1, 2001.

<sup>240</sup> See A406, Order, Jan. 7, 2002.

<sup>241</sup> See A602, leaflet discussing Jarecki's and Smerling's "Children's Entertainment Project." Judge Boklan, for example, informed the Review Team that Jarecki had shown her this leaflet, and told her that her interview would be part of such a film.

Jarecki and his production partner Marc Smerling released their finished product, *Capturing the Friedmans*, in 2003. They presented the film as a documentary exploring the elusiveness of truth—the film’s posters carried the inquisitive tagline “who do you believe?”—but the film can be viewed as an argument questioning the process by which Jesse and his father were prosecuted. Interviews in the film seem to show a community seized by a “moral panic,” as well as a police force and judicial system that aligned themselves against the Friedmans from the start. Victims are hardly mentioned, save for one, who claims he only “remembered” that he had been abused after being “hypnotized.” The film also fails to mention Jesse’s codefendant, Ross Goldstein, and Jesse’s appearance on *The Geraldo Rivera Show*.

For their parts, Jarecki and Smerling insisted that their film was meant to raise questions, not to answer them.<sup>242</sup> Even as the film received critical acclaim, victims reached out anonymously to fill in their side of the story: “We were abused, tortured, and humiliated by Arnold and Jesse Friedman in computer classes in Arnold’s basement,” two wrote.<sup>243</sup> Nevertheless, Jesse Friedman came to see the film as a vehicle by which he could assert his innocence.

## **B. Post-Conviction Litigation**

On January 7, 2004, Jesse Friedman filed a post-conviction motion in Nassau County Court, seeking to vacate his judgment, claiming that “newly discovered evidence”—some of which, he said, should have been disclosed under *Brady v. Maryland*<sup>244</sup>—demonstrated that the case against him was burdened by severe procedural defects. Jesse’s arguments incorporated three critical “findings” from the film: (1) the witnesses against him and his father had not “remembered” being abused until they were hypnotized; (2) the trial judge was hopelessly biased against him; and (3) police used suggestive interviewing tactics to elicit false allegations.

On January 6, 2006, Nassau County Supreme Court Justice Richard LaPera denied Jesse Friedman’s motion. Citing *United States v. Ruiz*,<sup>245</sup> the Court found that no hearing was necessary as to any issue of fact because the information alleged to have been withheld from the defendant was impeachment material to which he was not entitled prior to the entry of his guilty plea. On March 10, 2006, the New York State Appellate Division, Second Department denied Jesse Friedman’s application for leave to appeal. On May 24, 2006, Jesse Friedman’s application for leave to appeal to the New York Court of Appeals was dismissed.<sup>246</sup> This denial meant that Jesse Friedman had effectively exhausted his appellate options in state court.

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<sup>242</sup> Sharon Waxman, *Victims Say Film on Molesters Distorts Facts*, N.Y. TIMES, Feb. 24, 2004.

<sup>243</sup> See A597-99, reproduction of letters from victims.

<sup>244</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>245</sup> *United States v. Ruiz*, 536 U.S. 622 (2002).

<sup>246</sup> *People v. Friedman*, 6 N.Y.3d 894 (2006).

Six months later, on June 23, 2006, Jesse Friedman filed a petition for a writ of habeas corpus in the United States District Court, Eastern District of New York. The writ largely restated the claims Jesse had raised in state court earlier that year. On July 20, 2007, the United States District Court dismissed two of his three claims on the grounds that they were untimely. The Court reserved decision on the other claim, related to alleged hypnosis. On January 4, 2008, following oral arguments concerning the timeliness of that claim, the United States District Court dismissed the petition, in its entirety, as time-barred. It later granted a certificate of appealability on that specific issue, and Friedman appealed.

After an initial round of briefing on the time-bar issue, the United States Court of Appeals for the Second Circuit ordered the parties to submit supplemental papers discussing whether Jesse Friedman had ever argued “actual innocence” and, if so, the merits of such a claim. On July 20, 2009, Jesse Friedman submitted a supplemental brief arguing that he *was* “actually innocent,” and that, therefore, the Court should review claims that otherwise would have been time-barred.<sup>247</sup> The District Attorney’s office replied, and later, at oral argument, the Second Circuit asked the prosecutor to waive any procedural bars and allow a fuller examination of Jesse Friedman’s claims via a hearing, where a federal district judge could hear from witnesses. The District Attorney’s office respectfully declined to do so.

On August 8, 2010, the Second Circuit Court of Appeals affirmed the order of the United States District Court, Eastern District, finding that Jesse Friedman’s *Brady* claim was time-barred. The court went on to find that Jesse’s *Brady* claim was also meritless in light of Supreme Court precedent. However, the court also recommended that the Nassau County District Attorney undertake a full investigation to determine whether Jesse was wrongfully convicted. In crafting its decision, the Second Circuit specifically adopted four theories presented in *Capturing the Friedmans*, and presented them as critical areas for inquiry:

- **Police impropriety:** “flawed interviewing techniques were used to produce a flood of allegations, which the then-District Attorney of Nassau County [Denis Dillon]<sup>248</sup> wrung into over two hundred claims of child sexual abuse against petitioner.”<sup>249</sup>
- **Use of controversial therapy techniques, i.e., hypnosis:** “suggestive memory recovery tactics can create false memories and . . . aggressive investigation techniques like those employed in petitioner’s case can induce false reports.”<sup>250</sup>

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<sup>247</sup> The term “actual innocence” here refers to the rule that, in federal habeas corpus law, if a petitioner shows that it is “more likely than not that no reasonable juror would have convicted him” in light of some new evidence, a reviewing court may look past procedural bars, and examine potentially meritorious, underlying claims to relief based on constitutional error. *Schlup v. Delo*, 513 U.S. 298, 327 (1995).

<sup>248</sup> Denis Dillon served as District Attorney of Nassau County from 1974-2005.

<sup>249</sup> *Friedman*, 618 F.3d at 158.

<sup>250</sup> *Id.* at 160.



- **Defective, involuntary plea:** “the police, prosecutors, and the judge did everything they could to coerce a guilty plea and avoid a trial.”<sup>251</sup>
- **Moral panic:** “[t]he magnitude of the allegations against [Jesse Friedman] must be viewed in the context of the late-1980s and early-1990s, a period in which allegations of outrageously bizarre and often ritualistic child abuse spread like wildfire across the country and garnered world-wide media attention.”<sup>252</sup>

Before turning to these issues, and others raised by the film, this report outlines the procedures adopted by the Nassau County District Attorney to conduct that investigation.

### C. The District Attorney’s Response

In response to the Second Circuit’s decision, Nassau County District Attorney Kathleen M. Rice decided to re-examine the case and circumstances that led to Jesse Friedman’s guilty plea. The stated purpose of the re-investigation was to determine whether, based on the Second Circuit’s decision and the totality of available evidence, Jesse Friedman had been wrongfully convicted:

*This investigation involves a unique set of circumstances, so we designed an equally unique process that we believe will enable the fair and efficient evaluation of the case. Nobody knows whether or not our re-investigation will upend Jesse Friedman’s guilty plea or corroborate it, but what we do know is that our review will be completely transparent and thorough and we will ensure that the system has done everything it can to determine the truth.*<sup>253</sup>

To lead the team, D.A. Rice appointed three senior prosecutors, to be assisted by three other assistant district attorneys, a special assistant district attorney with over thirty years of investigative experience in both the public and private sector, and the office’s Chief Investigator. All had been hired after Rice’s election to the District Attorney’s office in 2006, and therefore none had any prior involvement with the case. Additionally, District Attorney Rice convened a group of independent experts (the “Advisory Panel” or “Panel”) from relevant fields “to work alongside the District Attorney’s office,” “enable the fair and efficient evaluation of the case,” and ensure the objectivity of the review process.<sup>254</sup> The Panel included the following, and was chaired by Mark F. Pomerantz:

- **Patrick J. Harnett:** a thirty-two-year veteran member of the New York City Police Department, served as (among other leadership positions) commanding officer of the Major Case Squad. Harnett was also the chief of the Hartford Police

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<sup>251</sup> *Id.* at 158.

<sup>252</sup> *Id.* at 155.

<sup>253</sup> Press release, NCDA, *Rice Announces Appointments To Friedman Case Review Panel* (Nov. 8, 2010), <http://www.nassaucountyny.gov/agencies/DA/NewsReleases/2010/110810friedmanpanel.htm>.

<sup>254</sup> *Id.*

Department from 2004 through 2006, and occupied a number of other command positions throughout his career. Today, Harnett is a law enforcement and public safety consultant, who conducts organizational and operational reviews of public safety agencies.

- **Susan Herman:** currently a professor in the Department of Criminal Justice at Pace University, Herman served as executive director of the National Center for Victims of Crime from 1997 to 2004, in other positions related to victims' services, and is also a member of the New York State Permanent Sentencing Commission.
- **Mark F. Pomerantz:** a recently-retired senior litigation partner, now of counsel at the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pomerantz is also a former prosecutor of the United States Attorney's Office for the Southern District of New York, where he led the Criminal Division from 1997 to 1999. In addition to his career as a litigator, Pomerantz taught classes on advanced criminal procedure at Harvard Law School; classes on appellate advocacy, contracts, and criminal litigation at Columbia Law School; and has guest lectured at Stanford University Law School.
- **Barry Scheck:** a professor of law at Benjamin M. Cardozo School of Law, Scheck is the co-founder and co-director of the Innocence Project, and a leading scholar and advocate in the field of criminal justice policy. His work focuses on the exoneration of the wrongfully convicted. In 1988, Scheck became involved in the use of DNA evidence in the criminal law, and remains an expert in the field. Today he also serves on New York State's Commission on Forensic Science, which regulates all crime and forensic DNA laboratories in the State.

Rice's appointments drew praise from the defense bar, including Jesse Friedman's attorney, who hailed the group as "distinguished," and one that "would not be a rubber stamp for anyone's agenda." The attorney, Ron Kuby, went on to say that, "from the perspective of a defendant looking for justice, it really could not be better."<sup>255</sup> This Advisory Panel was apprised of all interviews conducted, the results of those meetings, and some of the Panel members participated in interviews. The full Panel was present for one interview with Jesse Friedman himself; one Panel member participated in an interview with Witness 25 and his mother, and two members participated in an interview with Ross Goldstein. Additionally, the full Panel met with filmmaker Andrew Jarecki on several occasions, and once with both Jarecki and his production partner Marc Smerling. Jarecki, or his attorneys, also spoke on several occasions with chairman Mark Pomerantz.

Though District Attorney Rice is responsible for the result of this review, she and her team have benefited from the Advisory Panel's input and guidance throughout this investigative process. For example, the Review Team consulted with the Panel on procedures related to witness outreach, the standard of review, and document disclosure.

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<sup>255</sup> Alfonso A. Castillo, *Panel Set to Review Friedman Case*, NEWSDAY, Nov. 8, 2010.

## 1. Record Privacy

New York law strictly forbids the disclosure of documents that tend to identify the victims of a sex crime,<sup>256</sup> even where disclosure is made to one who, presumably, already knows the victims' names.<sup>257</sup> Furthermore, government agencies are under no duty to redact files made confidential under this provision to render them disclosable, especially where no level of redaction will completely remove the risk of identification.<sup>258</sup> Nor is it permissible for public officials to disclose grand jury minutes relating to *any* crime, except under court order or in the lawful discharge of their duties.<sup>259</sup>

These limitations are adhered to strictly by all state prosecutors, and apply even in the context of post-conviction review.<sup>260</sup> On the basis of this disclosure limitation, the appendix to this report contains only material from which no affirmative identification of a victim could be made. Throughout this process, the only individuals with complete access to victim identities have been the assistant district attorneys and investigators who worked directly on the review process.

A limited exception was made for the Advisory Panel on the basis of its unique relationship with the District Attorney's office, and the imperative that it fulfill its function as an independent oversight body by reviewing materials that would not otherwise be disclosable to the general public. Even so, the outside experts appointed by the District Attorney were not privy to grand jury testimony or unredacted witness statements. Additionally, each member of the Panel signed a confidentiality agreement, preventing disclosure of information while the re-investigation was underway.<sup>261</sup>

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<sup>256</sup> See N.Y. CIVIL RIGHTS LAW § 50-b(1).

<sup>257</sup> *Fappiano v. N.Y.C. Police Dep't*, 95 N.Y.2d 738, 748 (2001).

<sup>258</sup> *Karlin v. McMahon*, 96 N.Y.2d 842, 843 (2001); *Short v. Board of Managers of the Nassau County Medical Center*, 57 N.Y.2d 399, 404-05 (1982).

<sup>259</sup> N.Y. C.P.L. § 190.25(4); N.Y. Penal Law § 215.70.

<sup>260</sup> They are followed, for example, by the New York County District Attorney's conviction integrity bureau.

<sup>261</sup> The District Attorney also construed the appointment of each member of the Advisory Panel to create a legal relationship within which some limited disclosure is permissible. A district attorney may retain consultants to assist with investigating and prosecuting cases, and may "delegate duties" of her position to assistant prosecutors and advisors. *Schumer v. Holtzman*, 60 N.Y.2d 46, 53 (1983). Additionally, the Court of Appeals has held that the office of the district attorney possesses, in addition to those powers conferred by statute, "such powers as may be deemed necessary to the proper performance of [her] official duties." *People ex rel. Gardenier v. Board of Supervisors, Columbia County*, 134 N.Y. 1, 5 (1892). The District Attorney further enjoys "broad discretion" in exercising those powers. *People v. Di Falco*, 44 N.Y.2d 482, 486 (1978). The employment of advisors to perform specific functions is both a necessary corollary of this authority, and common practice in New York State. Because the Advisory Panel served in such an important independent role, limited disclosure to them was permissible where necessary to that function. Appropriate precautions, including redaction, were still taken when sharing sensitive material.

## 2. Witness Outreach Protocols

In reaching out to victims, the investigative team balanced the victims' right to privacy with their value to the overall investigation. Pursuant to the advice of the Advisory Panel, after assembling data on the location of victims and their families, the District Attorney attempted to contact, by registered letter, each of the children who provided grand jury testimony against the Friedmans and Goldstein, those children named as victims in Arnold Friedman's Close-Out Statement, and others believed to possess relevant case information.<sup>262</sup> These letters were generic, sent in unmarked envelopes, and deliberately addressed to the recipient's home to minimize the potential for professional embarrassment. Most individuals contacted received this communication.

No complainant who testified before the grand jury replied with any offer to participate in the re-investigation. Three complainants replied to state that they had nothing to add or contribute. There are many reasons these now-grown men may have for declining to speak with the Review Team and, therefore, this Report does not attribute any motive to the victims' silence.<sup>263</sup> Several other victims, none of whom testified before the grand jury, responded and offered information.

As the investigation drew to a close, the District Attorney's office sent a second letter to each individual, asking the recipient to contact the District Attorney's office by means of a confidential telephone line. This course of action was recommended by the Advisory Panel in response to news reports suggesting that some complainants had recanted their testimony in off-the-record interviews with the creator of *Capturing the Friedmans*. All such letters were sent in unmarked envelopes to preserve the recipient's privacy. The District Attorney's office received several significant responses to this communication, all discussed below.

After the film was released in 2003, complainants went to great lengths to protect their privacy. Some wrote letters asking that Judge Boklan "protect . . . victims from having [their] privacy further invaded."<sup>264</sup> Some retained counsel to that end. Others sought out psychiatric therapy upon the mere discovery that a movie had been made about the case. Drawing on the Review Team's experiences and the expertise of the Advisory Panel, the District Attorney sought both to avoid harming complainants and non-complainants alike, and to respect the privacy of the individuals involved.

For that reason, and again in consultation with the Advisory Panel, the District Attorney decided against attempting to secure interviews with former complainants through subpoena. This decision was undertaken with great care, and only after extensive

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<sup>262</sup> See A832-36, victim outreach letters.

<sup>263</sup> Jesse Friedman's defense team, in press statements, speculates that a complainant's non-response means they "would not or could not affirm their earlier accusations." Daniel D'Addario, *Uncapturing a Friedman*, SALON, Mar. 13, 2013, [http://www.salon.com/2013/03/13/uncapturing\\_a\\_friedman/singleton](http://www.salon.com/2013/03/13/uncapturing_a_friedman/singleton). The Review Team does not believe this to be an appropriate inference.

<sup>264</sup> See Section IV.A.3, *infra*.

deliberation. Ultimately, the exercise of subpoena power would have required the District Attorney to compel the testimony of individuals who have expressed a clear desire to be left alone, and in some cases, as described below, felt traumatized by the mere mention of Jesse Friedman. The potential damage entailed by such an intrusion was unlikely to be counterbalanced by any other factors. The significant events in this case occurred more than twenty-five years ago, when the complainants were children, and their current memories of the case are subject to all of the effects of the passage of time, in the course of which even important details may fade, disappear, or merge with other life events. Some memories could even have been affected by discussions in the “group therapy” sessions that followed after the case concluded. Succinctly, there was no guarantee that the exercise of subpoena power, with all the potential for harm it could entail, would yield reliable evidence, and this caveat applies equally to all witnesses.<sup>265</sup> In the end, it was determined that Jesse Friedman’s claim that he was wrongfully convicted could be evaluated fairly without unnecessarily re-traumatizing the victims of his crimes.

#### **D. Standard of Review**

Lastly, the District Attorney selected a legal framework to guide the re-investigation. In its opinion denying Jesse Friedman’s petition for a writ of habeas corpus, the Second Circuit cited Comment 6B to Rule 3.8 of the New York Rules of Professional Conduct as an ethical guide setting out when, consistent with best practices, a state prosecutor should review a criminal conviction.

*[W]hen a prosecutor comes to know of new and material evidence creating a reasonable likelihood that a person was wrongly convicted, the prosecutor should examine the evidence and undertake such further inquiry or investigation as may be necessary to determine whether the conviction was wrongful.*

This “reasonable likelihood” standard therefore describes a gateway that must be passed through before a review *begins*, rather than a guide for the conduct of the review itself. The District Attorney’s office proceeded to review Jesse Friedman’s conviction based on the Second Circuit’s conclusion that his petition itself demonstrated such a reasonable likelihood.

At the time, the Rules of Professional Conduct offered little guidance as to how to balance the evidence once such a review began. Accordingly, the District Attorney

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<sup>265</sup> A district attorney’s power to request subpoenas is generally restricted to live criminal cases. *See People v. Natal*, 75 N.Y.2d 379, 384-85 (1990) (construing relevant statutes to conclude that the subpoena power is available to district attorneys only through a live criminal proceeding). Grand juries may also be convened, and subpoenas then issued, however, to (a) investigate issues “concerning misconduct, nonfeasance or neglect in public office by a public servant as the basis for a recommendation of removal or disciplinary action,” (b) to convene an inquiry, at an officer’s request, to conclude that that public officer acted properly; (c) and, to consider and issue “recommendations for legislative, executive or administrative action in the public interest.” N.Y. C.P.L. § 190.85(1)(c).

selected a guiding principle, the “reasonable probability” principle, drawn from the clearly articulated legal rules applicable in other collateral proceedings. Recent amendments to the Rules of Professional Conduct clarify the matter, and state that prosecutors are obligated to take corrective action only if they uncover “clear and convincing evidence” of a defendant’s innocence. The amendment articulating this higher standard post-dated the District Attorney’s decision to apply the more lenient “reasonable probability” framework.

### 1. Reasonable Probability

The “reasonable probability” standard is well-defined<sup>266</sup> and offers Jesse Friedman the benefit of the standard of review that would have been applied at an evidentiary hearing convened to examine a *Brady* or newly-discovered evidence claim (even though claims regarding “newly discovered evidence” are, as a rule, not cognizable following a guilty plea).<sup>267</sup> The re-investigation, therefore, focused on the question of whether there existed a “reasonable probability” that Jesse Friedman was wrongfully convicted.

The Supreme Court has defined a “reasonable probability” as “a probability sufficient to undermine confidence in the outcome.”<sup>268</sup> In applying this standard, despite the fact that he pled guilty, the District Attorney would recommend setting aside Jesse Friedman’s conviction if she were to determine that the evidence uncovered by the Review Team established a reasonable probability that Jesse was wrongfully convicted.

### 2. Vacatur in the Interests of Justice

At the suggestion of the experts serving on the Advisory Panel, the District Attorney also considered applying the factors relevant to the dismissal of an indictment “in furtherance of justice,” as provided for in New York’s Criminal Procedure Law § 210.40. In deciding such a motion, courts must take into account any “consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon

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<sup>266</sup> New York state and federal courts alike weigh the probative value of “newly discovered evidence” and most non-disclosed exculpatory material by analyzing whether there is a “reasonable probability” that it would have affected the outcome of the case. N.Y. C.P.L. § 440.10(1)(g) (McKinney 2012) (requiring proof of a “probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant.”) and *People v. Salemi*, 309 N.Y. 208, 215-16 (1955) (stating that newly discovered material must be such that it will “probably change the result” on retrial); see also *United States v. Bagley*, 473 U.S. 667, 682 (1985) and *People v. Vilardi*, 76 N.Y.2d 67, 77 (1990).

<sup>267</sup> Review of newly discovered evidence is, under New York law, permitted only following trial. See N.Y. C.P.L. § 440.10(g) (permitting review of “new evidence” that “has been discovered since the entry of a judgment based upon a verdict of guilty *after trial*”) (emphasis added). Exception is made only for innocence claims predicated on newly-discovered DNA evidence, but even these motions are evaluated carefully, and granted only where the defendant “demonstrate[s] a substantial probability that the defendant was actually innocent of the offense of which he or she was convicted.” *Id.* at § 440.10(g-1). A *Brady* claim based on the failure to disclose specifically requested documents is examined in New York under a reasonable possibility standard. See *People v. Fuentes*, 12 N.Y.3d 259, 263 (2009).

<sup>268</sup> *Strickland v. Washington*, 466 U. S. 668, 694 (1984), quoted in *Bagley*, 473 U.S. at 682.

such indictment or count would constitute or result in injustice,” with specific reference to a list of factors.<sup>269</sup>

Such motions may be brought in a limited time frame—absent cause, no more than forty-five days after arraignment<sup>270</sup>—and never after sentencing.<sup>271</sup> Relief is to be granted “sparingly,”<sup>272</sup> and only in the “unusual case that cries out for fundamental justice beyond the confines of conventional considerations.”<sup>273</sup> A motion for dismissal in furtherance of justice was intended not as a defendant’s additional check on the system, but to give the judicial system control over the prosecutor’s previously unfettered discretion to enter an order of “nolle prosequi,” declining to prosecute a case further.<sup>274</sup>

Properly understood, the furtherance of justice remedy derives from a legal context entirely inapplicable to the post-conviction review process. The remedy is applied infrequently by New York courts, and generally for relatively minor crimes. It is not intended as a means to exonerate the innocent. It applies irrespective of guilt, where further prosecution would result in an injustice. A dismissal in furtherance of justice, then, is not a determination of guilt or innocence.<sup>275</sup>

Notwithstanding this rubric’s post-judgment inapplicability, analysis under the statutory “in furtherance of justice” factors here was also considered to guide the inquiry. Such an analysis would consider, among other things, “the seriousness and circumstances of the offense” charged, “the extent of harm caused,” “the history, character, and condition of the defendant,” and “the attitude of the complainant or victim” to the motion.<sup>276</sup> However, none of these factors favor Jesse Friedman, nor do they support mitigating his level three sex offender classification.

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<sup>269</sup> N.Y. C.P.L. § 210.40.

<sup>270</sup> *Id.* at § 255.20.

<sup>271</sup> See *People v. Weaver*, 112 A.D.2d 782, 782 (4th Dept. 1985); see also *People v. Newton*, 30 Misc.3d 1204(A), at \*5 (Sup. Ct. Bronx County 2010) (“Nothing contained in [applicable law] authorizes a court to entertain a pretrial motion once judgment has been entered, or vacate that judgment based upon C.P.L. 210.40(1) considerations.”) and *People v. Diaz*, 179 Misc.2d 946, 957 n.3 (Sup. Ct. New York County 1999) (“[R]eview of the case law cited by defense counsel, as well as the wording of N.Y. C.P.L. § 210.40, restricts discretion to dismiss the indictment up to the time sentence has been imposed.”).

<sup>272</sup> *People v. Algarin*, 294 A.D.2d 589, 590 (2d Dept. 2002).

<sup>273</sup> *People v. Belge*, 41 N.Y.2d 60, 62-63 (1976) (Fuchsberg, J., concurring); *People v. Keith R.*, 95 A.D.3d 65, 67 (1st Dept. 2012) (reversing unanimously Supreme Court’s grant of one such motion, despite the fact that the defendant had already served more than the maximum authorized sentence); see also *People v. Quadrozzi*, 55 A.D.3d 93, 103-04 (2d Dept. 2008) and *People v. O’Neill*, 85 Misc.2d 130, 131 (Sup. Ct. New York County 1975).

<sup>274</sup> See generally *People v. Douglass*, 60 N.Y.2d 194, 201-03 (1983).

<sup>275</sup> See, e.g., *People v. Prunty*, 101 Misc.2d 163, 168 (Crim. Ct. Queen County 1979) (holding that the existence of a plausible defense “merely raises an issue that is to be litigated at trial rather than to be determined by a judge on a pretrial motion. A motion to dismiss in furtherance of justice is, in no way, intended to be a substitute for a trial.”).

<sup>276</sup> N.Y. C.P.L. § 210.40(1)(a), (b), (d), (i).

## E. Evidentiary Limitations

During the course of this investigation, the Review Team identified evidentiary gaps that could not be remedied by any amount of research or effort. The investigation relied heavily on old prosecution files, compiled by the District Attorney's office from 1987-88; documents produced to the District Attorney's office by third parties, such as the Nassau County Police Department; and the court's file. Though the NCPD produced their complete files to the Review Team, the information in these files was incomplete. The goal of any conviction review should be to reconstruct the original investigation, but here, that was not entirely possible.

There is no indication that crucial documents were deliberately destroyed to frustrate future attempts at exoneration. Some gaps in the record are the product of nothing more than the passage of time. Physical evidence obtained during the execution of the state search warrant, for example, was destroyed in the ordinary course when the case closed and no appeal was filed. Several key witnesses have passed away. And over the course of a quarter century, witness memories have become hazy and confused with subsequent events, such that it becomes almost impossible to resolve conflicts between a statement a witness gave as a child and his recollection of that statement today. This demonstrates the importance of time limits on appeals: because Jesse filed his post-conviction motion in 2004 rather than in 1989, the Review Team's task became considerably more difficult.<sup>277</sup>

Additionally, some information was simply never created. Few police reports or notes exist to explain why the investigation took the path that it did. There was no timeline that outlined important investigative steps, an absence that hampered an accurate understanding of what happened in the Friedman case. Instead, the Review Team was forced to create a chronology by piecing together isolated notes, witness statements and contemporary interviews. Similarly, if a witness statement was reduced to writing by a detective, there was no way of ascertaining how many times that child was interviewed before that statement was taken.

In other cases, documents were found, but without necessary context. Some "notes" of interviews indicate a child's name, and the word "negative," with no explanation of what that could mean. When a child was interviewed more than once, there was rarely any indication of *why* the police decided to revisit the child. Two cases

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<sup>277</sup> Last month, the Supreme Court held that "untimeliness, although not an unyielding ground for dismissal of a petition, does bear on the credibility of evidence proffered to show actual innocence." *McQuiggin v. Perkins*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1924, 1936 (2013). Consideration of this factor, the Court found, "attends to the State's concern that it will be prejudiced by a prisoner's untoward delay in proffering new evidence," a delay that could allow a prisoner to "lie in wait and use stale evidence to collaterally attack his conviction . . . when an elderly witness has died and cannot appear at a hearing to rebut new evidence." *Id.* (citation omitted). Though the "actual innocence" standard did not guide the Review Team, the timeliness of an applicant's wrongful conviction claim should bear equally on that applicant's credibility for the purpose of a conviction integrity review investigation. The rule in *Perkins* accurately conveys the difficulty the Review Team faced in reconstructing this case.



clearly illustrate the problem of missing context. In the first case, the Review Team found a witness statement that referenced a critical document—a computer printout the witness made chronicling which days in the Friedman class were “bad”—but did not attach the printout. In the second, a former student told the Review Team in a recent interview that, as a child, he had torn down a leaflet advertising Elaine Friedman’s childcare service, and given it to police. Remarkably, the Review Team’s files contained a leaflet matching this witness’s description, but no reference that it had come from him.

Other records were surprisingly absent. Some witness interviews were conducted entirely off the record, with no attempt made to reduce to writing what was learned from the visit, or why the visit was made. Even inculpatory witness statements, though highly detailed, omitted some important information. For example, it is difficult to determine from some statements where specific criminal acts occurred—in sight, or out of sight of other students. Because this information was not documented, and cannot be reliably recalled, it cannot be reconstructed. Similarly, at the time of Jesse Friedman’s guilty plea, neither the police nor the prosecution had yet compiled a full list of the membership of each of Arnold Friedman’s classes. Though the police and prosecution files contain some partial rosters, there is no way of ascertaining whether those were made based on information from the victims themselves, from their parents, or from some other unnamed source. Indeed, to the knowledge of the Review Team, a reliable roster has never existed. Without this, the Review Team was left to reconstruct this information from statements signed by the children, expressing their belief as to what class they attended, and even these statements are sometimes contradictory.

This is a gap that could have been filled with information from the victims’ parents. But even though parents were likely interviewed, based on the minority age of their children, and the fact that they signed their children’s statements, few written accounts of those interviews exist. The Review Team was therefore not able to consider what every parent told police they observed, or failed to observe, about their children’s behavior before, during, and after the Friedman class. Even where parents related anecdotes indicating that children had suffered—at least one parent, for example, discussed finding bloodied underwear among her child’s clothes—either no follow-up work was done, or none was documented. Such deficient record-keeping is clearly not consistent with best practices and is, simply put, unacceptable. That said, though these deficiencies made the task of the Review Team and Advisory Panel that much more difficult, they did not prevent the Review Team from reaching the conclusions below with full confidence.

Lastly, the difficulty of the Review Team’s task was further compounded by the release of *Capturing the Friedmans*, and the actions of the film’s producers. Some witnesses refused to speak to the Review Team for fear of becoming involved in the public debate that attended the film. This problem was exacerbated still more by Jesse Friedman’s decision to, with the help of the filmmakers, make his purported innocence

the subject of a public relations campaign.<sup>278</sup> And, filmmakers Jarecki and Smerling were not forthcoming with evidence under their control. Though both told witnesses and the public that they possessed swaths of evidence capable of “proving” Jesse Friedman’s innocence, this material was not shared with the Review Team or the Advisory Panel until 2012.<sup>279</sup> Even then, the information that they chose to share was partial, thereby rendering it of poor evidentiary quality. The Review Team cannot, for example, derive or adequately review a “recantation” from a two-minute clip of film purporting to excerpt the words of an unidentified individual, or from a letter written by someone who does not wish to discuss his claims with the Review Team.

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This Report addresses in Section III the question of whether Jesse Friedman was wrongfully convicted, focusing on the issues raised by *Capturing the Friedmans* and the decision of the Second Circuit Court of Appeals. In Section IV, the Report considers Jesse Friedman’s guilt more broadly, in the context of the totality of all available information.

### **III. Findings Of Fact: Jesse Friedman’s Principal Claims Do Not Demonstrate a Reasonable Probability That He Was Wrongfully Convicted**

Insufficient evidence exists to support any of the exculpatory arguments advanced by Jesse Friedman and his counselors in his appeal to the Second Circuit. Specifically:

- **There is no evidence that improper police questioning materially tainted the investigation (page 64):** Though several witnesses described “aggressive” police questioning, none of the witnesses with whom the Review Team spoke described—and no evidence establishes—that police suggestion permeated the case and influenced witnesses to incriminate Arnold or Jesse Friedman in criminal sexual conduct.
- **The Review Team found no credible evidence that hypnosis was used on any complainant (page 77):** The only witness to recall being hypnotized was not, in fact, hypnotized. All physicians associated with the case recall that any hypnosis used was performed only after the indictments were filed, on a limited number of non-complainants, and with no effect. Further, though group therapy undoubtedly

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<sup>278</sup> See, e.g., Janet Upadhye, *Brooklyn Professor Fights for Exoneration of Convicted Sex Offender*, DNAINFO, Mar. 18, 2013, <http://www.dnainfo.com/new-york/20130328/brooklyn-heights/brooklyn-professor-fights-for-exoneration-of-convicted-sex-offender>.

<sup>279</sup> Until that time in the re-investigation, Jarecki had refused to share *any* of his findings unless the District Attorney’s office shared with him the witness statements, and grand jury minutes, from the original case. See, e.g., letter from Andrew Jarecki to NCDA and Friedman Advisory Panel (Mar. 9, 2012), at 1-3. This would have been illegal (see Section II.C.1, *supra*), and all such offers were rejected accordingly. See, e.g., Letter from Madeline Singas, Chief Assistant District Attorney, NCDA, to Andrew Jarecki, Mar. 27, 2012; see also letter from Andrew Jarecki to Mark Pomerantz (April 18, 2012), at 1 (offering to share some material).

- took place, evidence and interviews prove that it began only after all grand jury testimony concluded.
- **Jesse Friedman’s plea was not a product of undue coercion (page 82):** The record amply demonstrates that Jesse played a central role in his own defense, received competent and thorough legal advice, and balanced his options intelligently, before entering his guilty plea. Further, the record does not support the claim that Judge Boklan improperly coerced his guilty plea.
  - **The Friedman case is distinguishable from the “moral panic” cases of the 1980s (page 91):** Though the 1980s were spotted with some fantastical, factually impossible claims of sexual abuse, this case does not readily fit that paradigm. Here, the defendants pled guilty; the complainants were of comparatively older ages; the allegations were realistic; the investigation more reliable; and the acts were entirely consistent with those of an admitted pedophile.

The next section focuses squarely on these narrow claims and, in reviewing them, concludes that the concerns identified by the Second Circuit, in reliance on *Capturing the Friedmans*, do not establish a “reasonable probability” that Jesse was wrongfully convicted. Thereafter, Section IV discusses additional information learned during the course of this re-investigation, incorporates arguments made by Jesse Friedman’s advocates, and addresses the totality of information.

#### A. Claims of Inappropriate Police Questioning Are Exaggerated

Relying almost exclusively on *Capturing the Friedmans*, the Second Circuit’s decision in *Friedman* charged that “flawed interviewing techniques were used to produce a flood of allegations, which the then-District Attorney [Denis Dillon] wrung into over two hundred claims of child sexual abuse against [Jesse Friedman].”<sup>280</sup> To support this claim, Jesse Friedman now relies on little more than the film. However, consideration of that material—specifically, an excerpt of an interview with one of a dozen police investigators, and a dramatic reading of a “transcript” of one police interview—yields no reason to believe that such interviews resulted in unreliable information.

The Review Team conducted numerous interviews with former computer students, parents, and police investigators, to recreate the investigation to the extent possible. The Team ultimately was able to speak to only some of those who police interviewed between 1987 and 1988, and it is difficult to draw any broad generalization from this partial sample. Some had favorable experiences with police, while others believed that police did set out with a definite goal in mind. However, to the extent that pointed questioning did occur, it tended to cluster in later interviews, after the first and second indictments, and in interviews with victims identified by Arnold Friedman in his

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<sup>280</sup> *Friedman*, 618 F.3d at 158.

Close-Out Statement.<sup>281</sup> And even then, pointed questioning appeared directed at identifying and finding help for the victims.

Investigative techniques have evolved since the late 1980s. Were the Friedman case to occur today, for example, officers would interview students with the assistance of trained experts, and those interviews would be videotaped to control for the possibility of suggestion.<sup>282</sup> But this is hindsight, as this was not general practice at the time. As it stands, there is little evidence that police misconduct negatively affected the investigation.

### 1. Detective Anthony Squeglia's Interview

*Capturing the Friedmans* depicts interviews with just two detectives, out of the twelve law enforcement officials detailed to the investigation. Of those interviews, only one, with Detective Anthony Squeglia, supports the claim that police attempted to “force children to agree with the detectives’ story.”<sup>283</sup> But even this depiction is misleading.

From a transcript that runs more than fifty pages, *Capturing the Friedmans* excerpts only a single short clip. In that short portion, Detective Squeglia states, in response to a question that is marked “unintelligible” on the transcript.<sup>284</sup>

*If you talk to a lot of children, you don't give them an option, really. You just, you be pretty honest with them. You have to tell them pretty honestly that . . . . “We know that there was a good chance that he touched you or Jesse touched you or somebody in that family touched you in a very inappropriate way.”*<sup>285</sup>

Setting aside any question about the reliability of this interview—conducted almost fifteen years after the investigation concluded, informally, on the detective’s front lawn—a review of the remainder of the interview transcript demonstrates that the film highlights an unrepresentative sample of a much larger interview. Elsewhere in the *unedited* transcript, Detective Squeglia explains that “you don’t want to re-victimize the victim,”<sup>286</sup> and that he strove to avoid putting words in an interviewee’s mouth:

*Q: [I]f they were having trouble getting to a sort of confession point—did you find it useful to say to them, you know—you know, “We spoke to Jimmy and he said—”*

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<sup>281</sup> One exception includes Witness 10, who said that coercive police tactics depicted in *Capturing the Friedmans* “rang true.” Statement of Witness 10 (May 20, 2013), at 2. For a further discussion of this witness, see Section IV.A.5(d), *infra*.

<sup>282</sup> For a discussion of modern best practices, see Section III.A.8, *infra*.

<sup>283</sup> *Friedman*, 618 F.3d at 147.

<sup>284</sup> A752, transcript of interview with Detective Anthony Squeglia (ret.), part one.

<sup>285</sup> A234-35.

<sup>286</sup> A798, transcript of interview with Detective Anthony Squeglia (ret.), part two; see also A747.

*Det. Squeglia.: No, we— wouldn't use that. No. I wouldn't use that anyway. My— my technique was that they would ask me, "what— what— what do you know about him?" And I'd say, "I know things. But I can't tell you what I know because you know things that I don't know. . . . "So, well do you know what happened to me?" "No, I don't know what happened to you. But I know something happened to you, so I want you to tell me— if you can. If you can't, we'll come back another day."*<sup>287</sup>

Detective Squeglia went on to describe the importance of avoiding suggestion, saying, "you can't put anything into the statement. You can't interject anything into it. It has to be their wording freely. And— usually at that point, they— they want to talk to ya."<sup>288</sup>

Detective Squeglia expanded on this point, saying that interviews were open-ended—children "were told they could get up and leave"—and fluid, spanning several sessions at the child's discretion.<sup>289</sup> Revelations frequently came when, after an unproductive first interview, Detective Squeglia and his partner "were invited back" by the child himself.<sup>290</sup> In one such interview, "the one that [he says] actually broke the case," the child ultimately volunteered information "out of the blue, from just sitting down talking." According to the transcript, the child then handed Detective Squeglia a "boy/boy" magazine along with a pornographic videogame, both of which he said had been given to him by the Friedmans.<sup>291</sup> This was common, Detective Squeglia told his interviewer for *Capturing the Friedmans*—"they actually wanna tell you"<sup>292</sup>—and he attributed such revelatory moments to his success at creating a "very friendly atmosphere" where children could "feel confident."<sup>293</sup>

Detective Squeglia did discuss incentives offered to prospective witnesses—characterized by the Second Circuit as "reward[s]" for "cooperative children"—but explained them as attempts to win the trust of *uncooperative* children.<sup>294</sup> When faced with a child who would "totally ignore you," Detective Squeglia explained that he would appeal to the child's trust for authority ("we'll deputize you and you know— I like cops— do you like cops?"), and leave, asking the child to "think about it."<sup>295</sup> On returning, again at the child's request rather than his own initiative, he would follow his

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<sup>287</sup> A803-04.

<sup>288</sup> A798.

<sup>289</sup> A748.

<sup>290</sup> A745.

<sup>291</sup> A746.

<sup>292</sup> A748.

<sup>293</sup> A745.

<sup>294</sup> *Compare Friedman*, 618 F.3d at 147 ("The detectives would reward cooperative children with 'pizza parties' and police badges. When children did not admit to experiencing sexual abuse, however, detectives would persist in their questioning, sometimes taunting the children for failing to offer the desired answers") with A769.

<sup>295</sup> A769.

“feeling.”<sup>296</sup> Either the child would feel that he was a friend and open up of his own accord after initial small talk, or he would see that the child would “just never give it up.” In such cases, Detective Squeglia would simply leave.<sup>297</sup>

Even analyzing the entire substance of Detective Squeglia’s interview, the method of questioning that the detective describes is not consistent with best practices. If the full interview, recorded informally and fifteen years after the fact, accurately represents how Detective Squeglia interviewed his witnesses, the detective was not an ideal investigator for this type of case, as measured by today’s standards. But nor was he as one-dimensional as he appears in Jesse’s submissions. The portion of Detective Squeglia’s interview shown in *Capturing the Friedmans*, and relied upon by the Second Circuit, fails to accurately represent the substance of the larger interview. Instead, the out-of-context excerpt creates an exaggerated sense of police wrongdoing that is not otherwise supported by the record available to the Review Team. It is unsurprising that a producer would edit a larger interview for use in a film. This is the artist’s prerogative. But the product of this artistic license cannot be represented as legally reliable.

## 2. Other Police Accounts Demonstrate Appropriate Questioning

Absent from Jesse Friedman’s advocacy papers, and from the Second Circuit’s decision, is the other interview included in *Capturing the Friedmans*, with Detective Doppman. This detective took statements incriminating the Friedmans from eight students, and obtained the results without, he said, engaging in leading. Indeed, Detective Doppman described leading as a “very, very dangerous type of interview process to use.”<sup>298</sup> In the film, Doppman’s contrasting account precedes Squeglia’s by less than a minute, is included presumably to balance Squeglia’s questionable practices, and should not be ignored.<sup>299</sup>

Based on interviews with other officers—including Detectives Merriweather, Reihsing, Myers, Galasso and Officer Durkin—Detective Doppman’s account more accurately represents the course of the actual investigation. All officers spoken to by the Review Team reject the claim that victims were told what to say. Detective Larry Merriweather was Detective Squeglia’s partner for many major interviews and said that he would have noticed, and put a stop to, any interviews characterized by explicit leading. Moreover, he suggested that leading would have been (in his opinion) unnecessary, unproductive, and pointless, given the children’s lack of a working sexual vocabulary. Nor, he said, did detectives have time to “linger” with children and coax favorable testimony from them, because the case grew so rapidly, and included so many potential victims. There is also evidence that, where a household contained more than one boy witness, investigators separated the boys before questioning them.<sup>300</sup> This decision

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<sup>296</sup> A769.

<sup>297</sup> A769-70.

<sup>298</sup> A234.

<sup>299</sup> *Id.*

<sup>300</sup> See Affirmation of David Kuhn (Jan. 6, 2004), at ¶ 7.

demonstrates that police were aware of the danger of cross-contamination between witnesses.

Police Officer Mary Ann Durkin's recollection of the case is representative of statements made by many other police investigators. She recalled that she interviewed potential victims using a "calm, low-key, empathetic and compassionate" manner. Officer Durkin did not receive specialized training for handling child witnesses before the investigation, but nonetheless, was very conscious of not overstepping what she could say to a child without putting words in his mouth. She viewed this as basic common sense. Detective Reihing, too, stated that he consciously avoided leading questioning in interviews, for fear that the resulting statement would be "useless."

Investigators acknowledged that some victims were visited repeatedly, but for different reasons. Detectives Galasso, Squeglia, and Jones all remembered that, on at least one occasion, they conducted repeat interviews because they were asked back, by the child, or by his parents. Officer Durkin believed that she might have re-visited a child if another interviewee named the child as a victim. In that case, neither she, nor her partner Detective Merriweather, would confront the child with what other witnesses had said—though they might have said something along the lines of, "Jimmy said Arnold was not nice," a strategy that in some cases produced results.

3. Some Witnesses Were Interviewed on Multiple Occasions; This Was Not Universal Practice or Necessarily Improper

Some witnesses were re-interviewed by detectives, but the extent of these re-interviews and their effect are unclear. The reasons for these re-interviews were not documented, but detectives interviewed by the Review Team were certain that, in a few cases, these visits occurred at the child's request, or because the parents contacted the police. Regardless, there is no basis to conclude that such interviews led to false charges.

One of filmmaker Andrew Jarecki's investigators, David Kuhn, swears that Detective Wallene Jones told him, during an interview at Detective Jones' Atlanta home, that she interviewed one student fifteen times. Kuhn reported that statement, without context, in an affirmation annexed to Jesse Friedman's post-conviction filings.<sup>301</sup> But Detective Jones vigorously contests the accuracy of Kuhn's affirmation, and the practices he used to procure it:

*According to the Kuhn affirmation, I said that I visited one child's home fifteen times, and conducted interviews that lasted as long as four hours. No child was ever visited fifteen times. The child to whom I here referred was visited more often than was usual, and I may have said that he was visited "fifteen times." That, however, was akin to saying that he was visited "a million times"—it was an*

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<sup>301</sup> See *id.*, at ¶¶ 9-11.

*exaggeration, intended to convey that this child was visited repeatedly. Of course, had I known that this interview would be used not for the purpose represented to me, but to attack the propriety of the police investigation, and had I still chosen to participate, I would not have spoken casually and, perhaps, carelessly, as I did, but would have addressed the questions with more precision.*<sup>302</sup>

Indeed, Detective Jones recalled specifically being called back to interview this child by the child's mother, who said "she repeatedly noticed that her son's underwear was missing, and that she later learned that the boy had thrown it away because it was stained."<sup>303</sup> Nor, Detective Jones said, was any child "ever interviewed for four hours at one sitting."<sup>304</sup> In light of this, Kuhn's affirmation alone is not reliable proof that any such abusive repeat interviewing occurred.

As stated above, officers gave several explanations for why children may have been revisited by police. Some police investigators, such as Officer Durkin, said that officers would return to one child if another student gave reason to believe that the first had been abused. Other officers said that when they returned to a child for a second interview, it was because, as above, the child himself, or his parents, had requested that police return for another interview.

Some complainants were subjected to repeat visits, but not all. Some non-complainants were interviewed only once, such as former student [REDACTED], who is now an employee of Nassau County, and another prominent non-complainant, the subject of the Meyers interview discussed *infra*. For each of these, and for many more, when they told police that they were not abused, the officers simply left and never came back, corroborating officers' accounts that they returned only at the request of the child, or his parents.

Even though many children were visited repeatedly—and, in response, complainants disclosed abuse in multiple stages—these accounts are not necessarily unreliable. Research demonstrates that, in sexual abuse cases, "delay of abuse disclosure is very common."<sup>305</sup> One such study puts the issue plainly: "for many children, disclosure of sexual abuse is a process, not an event."<sup>306</sup> Under this theory, a multiphase investigation including an initial phase for introduction and rapport building is both common and preferred,<sup>307</sup> and a single interview model is more likely to leave a child "at

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<sup>302</sup> See Affidavit of Wallene Jones (June 2, 2004), ¶¶ 6-7.

<sup>303</sup> See *id.* at ¶ 8.

<sup>304</sup> *Id.*

<sup>305</sup> See, e.g., Kamala London & Maggie Bruck *et al.*, *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Way Children Tell?*, 11 PSYCH. PUB. POL'Y & L. 194, 220 (2005).

<sup>306</sup> Connie Nicholas Carnes *et al.*, *Extended Forensic Evaluation When Sexual Abuse Is Suspected: a Multisite Field Study*, 6 CHILD MALTREATMENT 230, 230 (2001).

<sup>307</sup> *Id.* at 231.



risk” of nondisclosure, not because the event never happened, but because children are “not prepared or able to describe the abuse in the first interview.”<sup>308</sup> Other academics have warned against conflating types of repetition: though repetition of the *same question* may produce false reports, “repeated interviews using open-ended questions may help children overcome the emotional difficulties and stresses often associated with forensic interviews about sexual abuse.”<sup>309</sup> One such case study determined that a child’s eventual, full report of sexual abuse, ultimately “corroborated by suspect confessions, eyewitness accounts, or medical evidence,”<sup>310</sup> could evolve from open questioning over a period involving (first) a “presubstantive” rapport-building interview,<sup>311</sup> and then a series of follow-up substantive interviews.<sup>312</sup> Therefore, no conclusion can be drawn based only on the fact that detectives may have visited a child more than one time before obtaining a statement.

4. Early Phase I and II Interviews Were Generally Characterized by Open, Non-Leading Questioning

According to the Second Circuit Court of Appeals, witnesses recalled “with great consistency that detectives employed aggressive and suggestive questioning techniques to gain statements from children who had attended Arnold Friedman’s computer classes.”<sup>313</sup> This conclusion—supported in the Court’s decision by just two witness accounts—does not hold up under a more thorough review.

First, the Review Team spoke with many individuals, including complainants, non-complainants, and parent-witnesses, about the methods police used. Those people, who were either interviewed or witnessed interviews conducted during the initial phase of the investigation (between November 12 and December 17, 1987), told the Review Team that police were not aggressive, did not engage in leading questioning, and instead let witnesses tell their stories. The parent of one non-testifying victim, the father of Witness 19, was present for his son’s interview, and described police questioning as “gentle,” non-leading, non-aggressive, and composed entirely of open-ended questioning. In another case a parent even said that police seemed uninterested in their work. One non-testifying victim, now an attorney, said that questioning resembled a direct examination, not a cross-examination. Other evidence supports this view: Officer Durkin recalled receiving a “nice letter” from a parent thanking her for the kindness she showed while interviewing her son.

When witnesses described more pointed questioning, or leading, the interview can generally be dated to the spring of 1988 or later, after the second indictment, after Arnold

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<sup>308</sup> *Id.* at 236.

<sup>309</sup> David La Rooy *et al.*, *Do We Need to Rethink Guidance on Repeated Interviews?*, 16 PSYCH. PUB. POL’Y & L. 373, 385 (2010).

<sup>310</sup> *Id.* at 384.

<sup>311</sup> *Id.* at 379.

<sup>312</sup> *Id.* at 379-80.

<sup>313</sup> *Friedman*, 618 F.3d at 146.

Friedman's guilty plea, *and* after his Close-Out Statement. One exception is Witness 1, who gave his first and only statement in December of 1987, and wrote in a 2003 affidavit that police "made specific suggestions . . . about things that they believed happened in the computer classes."<sup>314</sup> But in the same affidavit, Witness 1 said that he was interviewed more than once.<sup>315</sup> In his interview with the filmmaking team, Witness 1 blunted this claim, saying, "I don't feel like [police] were being very forceful," and, "I'm sure they weren't trying to upset me or anything," statements he confirmed in a 2012 interview with the Review Team. Regardless of how police interviewed him, Witness 1 did not adopt police suggestions, and instead implicated Jesse Friedman only in the physical abuse of another student, leading to a single count that was later dismissed.

Witness 25, who was interviewed at least twice and who figures prominently below, also indicated that he felt pressure from police, possibly during an interview conducted late in the investigation, though he felt vastly more from his mother and his therapist. Other similar accounts of pointed police questioning come from the "Meyers tape," discussed below, and the Nassau County employee, [REDACTED], named above. In a conversation with the Review Team, that witness said that police were forceful and leading. He said police investigators asked him specifically if Arnold Friedman put his penis on the student's back, and when he said that he did not, the officers asked if he might not have been aware of it when it happened. Based on information provided to the Review Team regarding the timing of this interview, the Review Team can date this interview to after the close of the second phase of the original investigation. Whatever pressure he may have felt made no impact, because he continued to deny being victimized or witnessing the same.

Other witnesses described feeling pressured to acknowledge that they were abused, but even then, they said, they were not told what to say. Witness 33, a former student who provided an affidavit for Jesse's habeas petition, gave such a statement, telling the Review Team that police were "not aggressive in attitude but in approach," in that they returned to his house several times. In another such case, Witness 11 said police "were aggressive but did not tell [him] what to say." He, too, was interviewed only late in the investigation, after the Close-Out Statement. It could be that, once Arnold Friedman pled guilty, once Ross Goldstein began to cooperate, or once children made statements indicating they witnessed other students being abused, police felt justified in adopting a firmer approach. In this, they may have been guided by a belief, based on conversations with specialists at the time, that children will suffer lasting psychological consequences later in life if they do not disclose abuse.<sup>316</sup> Indeed several witnesses, including both Witness 11 and the subject of the "Meyers tape," were told that they should disclose that they were abused to avoid suffering from profound psychological disorders later in life.

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<sup>314</sup> *Id.* at 147 (quoting [REDACTED] Aff. ¶ 5).

<sup>315</sup> In the affidavit, Witness 1 states "I remember the police questioning me on two occasions" ([REDACTED] Aff. ¶ 4), but later describes "many sessions" of questioning. *Id.* at ¶ 8.

<sup>316</sup> At the time, community members were concerned that children who went untreated would suffer for their symptoms later. *See* A858-61 (discussing a presentation by Arthur Greene, in which he emphasized the importance of disclosure for victims).

5. The “Meyers Tape” Depicts an Interview Conducted to “Close Out” the Case, Not to Charge Jesse Friedman

The Second Circuit’s decision explains that a “videotape” of a police interview with one student, Witness 28, “vividly illustrates” forceful questioning by police officers.<sup>317</sup> Regrettably, the tape no longer exists. Ms. Meyers, the mother of Witness 28, has stated that she accidentally discarded the only copy of the tape years ago, long before Jesse filed his first post-conviction motion. The Second Circuit, therefore, never saw the original tape. What the court actually reviewed, instead, was defense counsel’s reenactment of a selected portion of notes he took while viewing the original tape.

The tape originated when Ms. Meyers used a video camera to produce a Betamax recording of police interviewing her son. By her own description the sound quality was spotty, and the video, worse. While Jesse Friedman’s case was pending, Ms. Meyers was contacted by Jesse’s trial attorney at the time, Peter Panaro. At his request, she screened the tape for him, and as he watched it, Panaro took notes of what he saw and heard on the tape.<sup>318</sup> But those notes stretch about twenty pages, with writing generously spaced, from an interview that, according to Ms. Meyers, lasted at least an hour. This incomplete transcription, presumably colored by the defense attorney’s impression of what facts would have helped his client most, was then polished, formatted, and substantially trimmed to create the clearer “transcript” annexed to Jesse Friedman’s brief for his Second Circuit appeal.<sup>319</sup> Lastly, the production team for *Capturing the Friedmans* recorded Panaro reading this second, shortened “transcript,” and included *that* reading in the DVD release of their film. In other words, what the Second Circuit reviewed in the movie was three-times removed from whatever “tape” of the interview initially existed.

Setting aside substantial sourcing problems, the “tape” purports to describe an interview in which, as described above, police pushed Witness 28 to admit that he was victimized. Police officers expressed incredulity, for example, that abuse “happened to everyone else but not to you,” and warned the child that if he *was* abused, and failed to share it with authorities, he would, later in life, become gay, and may even become an abuser himself.<sup>320</sup> These statements, at a minimum, are unprofessional, unfair, and cruel. But they did not result in false disclosure here. And, nowhere did the police suggest what may have happened to the victim, nor did they show any interest in charging Arnold Friedman, or even mention Jesse Friedman:

*We are trying to find out who the other victims are to help the parents and those children. Arnold Friedman will not be charged with any other additional charges. There’s no*

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<sup>317</sup> *Friedman*, 618 F.3d at 160 n.10.

<sup>318</sup> A307-27.

<sup>319</sup> See A328-29.

<sup>320</sup> *Id.*.

*axe to grind here. . . . It was all stipulated in open court that there will be no further charges.*<sup>321</sup>

On the “tape,” police state that they were led to Witness 28 by two other witnesses, who said they observed him being victimized by Arnold Friedman; and claim that Arnold had admitted to victimizing these children “in open court.”<sup>322</sup> This last statement is telling, as it shows that the “Meyers tape” was filmed in the immediate aftermath of Arnold Friedman’s plea and his March 25, 1988 Close-Out Statement. It is relevant that police conducted such a tense interview and still never mentioned Jesse Friedman, supporting the detectives’ claim that they were primarily interested in making sure child victims received appropriate help.

On a separate note, Peter Panaro’s file notes include a memorandum summarizing a conversation with Ms. Meyers, dated January 1988, stating that her children “liked Mr. [Friedman] more than Jesse,” and that when they originally saw the Friedmans on the news, they reacted with shock, saying, “Not Mr. [Friedman], maybe his son, but not Mr. [Friedman].”<sup>323</sup> The memorandum goes on, saying the mother “remember[ed] some things that her kids said about Jesse,” but that she “[did] not want to remind them”:

*For instance, once when she was going to be late in picking them up, one of her kids did not want to go because they would have to wait with Jesse. She spoke to Mr. [Friedman] about this, and Mr. [Friedman] told her that Jesse was not getting along too well with the kids, and [he] would have to throw Jesse out of the class.*<sup>324</sup>

Though the Friedmans considered Witness 28 and his mother as potential defense witnesses, Witness 28’s value at trial may have been limited by these revelations.

6. The Evidence Does Not Support the Allegation that Police Used the Close-Out Statement to Generate Charges Against Jesse Friedman

The Close-Out Statement is discussed *supra*. Succinctly, it resulted from an interview police conducted with Arnold Friedman in an attempt to close out the case. In the interview, Arnold was asked to name all of the children he had victimized, and was promised immunity for any such confession. The goal of the interview was, ostensibly, not only to close the case against Arnold Friedman, but also to secure a final and reliable

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<sup>321</sup> A328.

<sup>322</sup> *Id.*

<sup>323</sup> A306.

<sup>324</sup> *Id.*

list of all of his victims, so that they could be located and advised to seek treatment if necessary.<sup>325</sup>

Because the promise of immunity could have incentivized Arnold Friedman to simply “admit” to any crime he was asked about, Jesse Friedman’s advocates have questioned the reliability of the Close-Out Statement. They have argued that it must necessarily have been used to turn Arnold’s admissions against his son, Jesse. No evidence supports this allegation.

First, though the promise of immunity meant that Arnold could have believed it was in his interest to confess to abusing every student he was asked about,<sup>326</sup> Arnold did not. Instead, after initially maintaining his innocence, Arnold offered detailed accounts of the sexual acts he performed with forty-one children, denied any sexual contact with twelve children, and also denied any such contact with any of his former students from the Woodmere Academy and Bayside High School.<sup>327</sup> Arnold went so far as to detail the course of conduct he would undertake to determine which children might be receptive to sexual activity, and which would not.<sup>328</sup> He even described using computer games to distract his students, so he could touch them.<sup>329</sup> The level of detail provided by Arnold Friedman suggests that the document was not a wholesale invention.

Most importantly, the Close-Out Statement was not used against Jesse Friedman. Instead, police documents show that the investigation was “re-started” in mid-March, shortly *before* Arnold’s interview,<sup>330</sup> and police took incriminating statements from, at most, only two “new” witnesses after that point.<sup>331</sup> Moreover, the Close-Out Statement mentions Jesse Friedman only in the beginning, where officers promise Arnold Friedman that the statement would be used only to identify and help victims,<sup>332</sup> not to prosecute his son.<sup>333</sup> If officers intended to use the statement to “check their work”<sup>334</sup> in the continuing investigation against Jesse Friedman, they nonetheless failed in both the Close-Out and Meyers interview to ask any questions specifically about Jesse Friedman.

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<sup>325</sup> See A858-61.

<sup>326</sup> Arnold stated as much in his “Open Letter.” See A562 (“I had to lie that I abused every one of my students. If I inadvertently left one out, I could be subject to further indictments.”).

<sup>327</sup> For example, Arnold Friedman would deny sodomizing some children, but admit to fondling them. See, e.g., Close-Out Statement, at 25:20. Note that the Close-Out Statement is omitted from the public version of the appendix to this report, pursuant to Civil Rights Law § 50-b.

<sup>328</sup> *Id.* at 35:25-37:14. He denied using pornographic books to sexualize children. *Id.* at 47:7-19.

<sup>329</sup> *Id.* at 118:1-5.

<sup>330</sup> See A291-92.

<sup>331</sup> See note 95, *supra*.

<sup>332</sup> See Close-Out Statement, at 24:13-19.

<sup>333</sup> See *id.*, at 14:17-22; 20:11-21:16.

<sup>334</sup> A set of handwritten notes provided to the Review Team by Arline Epstein show that, at some point after the Close-Out Statement was taken, Detective Sergeant Galasso called Epstein to tell her about the results of the interview, and to inform her that she was “getting [the] task force back tog[ether]” to “go back out & re-interview kids to be sure of the case against Jesse.” A862. Epstein’s handwritten annotations, made with the help of the filmmaker, assume that the Close-Out Statement would be used as a tool in that process.

## 7. Not All Suspects Were Prosecuted

Advocates for Jesse Friedman have argued that the police aggressively deployed the threat of prosecution to neutralize potential adult defense witnesses.<sup>335</sup> Instead, it appears that the police investigated and arrested individuals on the basis of witness statements, and declined to arrest other adults, even those close to the case, where the evidence did not support it.<sup>336</sup>

If the Friedman prosecution followed the traditional “moral panic” paradigm, Elaine Friedman (at least) would have been arrested on abuse charges, based solely on her proximity to her husband’s crimes, along with David and Seth Friedman. But none were ever prosecuted. Similarly, Witness 26, a teenager selected by Arnold Friedman to replace Jesse as computer class co-instructor, was also a natural target for police investigation due to his presence in the class. But department files disclose only one meeting between police and Witness 26, in which he seems to have been treated as a witness rather than a suspect. Thereafter, Witness 26 disappears from the case entirely, despite the fact that one complainant indicated that Witness 26 was working in the class while abuse occurred.

It is true that two of Jesse Friedman’s friends were subjected to a line-up procedure,<sup>337</sup> and one was questioned extensively. But the District Attorney declined to prosecute both, even when police sought an arrest warrant for one of the two.<sup>338</sup> A third individual, a friend of Jesse Friedman’s who was staying at Jesse’s home during some part of the relevant time period, was never interviewed or prosecuted. Though he submitted an affidavit in 2003 stating his belief that his arrest was imminent during the spring of 1988, nothing in the record supports this contention.<sup>339</sup> Police investigators never assumed that this case constituted a “sex ring,” where every adult was presumed guilty, and the District Attorney’s exercise of prosecutorial discretion further shows that such an approach would not have been successful.

## 8. Modern Best Practices

Before leaving this subject, it is important to note that police interviewing techniques *have* evolved since 1988, especially where child sex victims are concerned.

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<sup>335</sup> See De Becker & Horowitz, *supra* note 13, at 3. Journalist and paid consultant Debbie Nathan also repeated a similar claim in an interview included in the DVD release of the film’s “Bonus Features.” See CAPTURING THE FRIEDMANS (Magnolia Pictures 2003), “Bonus Features.” To access this material, navigate to “The Case,” and select “Additional Suspects.”

<sup>336</sup> Cf. Debbie Nathan, *Complex Prosecution*, THE VILLAGE VOICE, May 20, 2003, available at <http://www.villagevoice.com/2003-05-20/news/complex-persecution/> (claiming that the Friedman case fit the mold of a “sex ring” prosecution, in which networks of supposedly connected perpetrators are indicted and prosecuted).

<sup>337</sup> See Section I.H.3, *supra*.

<sup>338</sup> See A293.

<sup>339</sup> See [REDACTED] Aff.

Today, specialists are involved directly in the interview process, to ensure that statements are accurate and reliable.

Specifically, today the Nassau County Multidisciplinary Team (“MDT”) responds to allegations of sexual and severe physical abuse of children of Nassau County, in adherence to both the Child Advocacy Center model and the standards set by the National Children’s Alliance. A collaborative response including all relevant members of the MDT is initiated at the time of the first report, and continues throughout the duration of a case. The Nassau County MDT consists of the District Attorney’s Office, the NCPD, the Department of Social Services, the Office of the County Attorney, the Coalition Against Child Abuse and Neglect, and the NuHealth SCAN program. The goals of the MDT in cases of alleged sexual abuse include ensuring the safety of the children, reducing trauma, streamlining the investigative and interview process, promoting the successful prosecution of offenders and ensuring the physical and psychological treatment of abuse victims.

In order to meet these goals, and when the circumstances allow, child victims are interviewed jointly by a team which may include NCPD detectives, members of the District Attorney’s office, and members of Nassau County Child Protective Services. Forensic interviews are intended to be neutral, non-leading and fact-finding in nature, and carried out by interviewers who have successfully completed competency-based forensic interview training.

This joint effort is intended to reduce the number of interviews the child is subjected to. Every effort is made, as long as circumstances allow, to have child victims under the age of twelve interviewed at the Child Advocacy Center, where the interview can be video recorded and other members of the MDT can observe from an adjoining room. Information gathered during the forensic interview process is shared with MDT medical staff so that the children seen for medical exams need only be questioned regarding their medical history. Continued medical and mental health services are provided to the children and their families at the Child Advocacy Center with additional resources and support being offered to them through victim advocates.

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The reliability of a major police investigation is best reviewed on appeal, close in time to the event itself. Here, the Review Team needed to reconstruct the original investigation from twenty-five year old memories, with all the limitations that entails. As reconstructed, though, the record does not support Jesse Friedman’s version of events. It also does not support the impression conveyed in *Capturing the Friedmans*, of systematic, overbearing police coercion. After setting artistic license to one side, and considering the unadorned facts, there is simply no evidence that the police engaged in a widespread, concerted effort that “wrung” false testimony from each and every witness. A fair view of the record suggests that, in the earliest phases of the investigation,

detectives turned up evidence that was barely concealed beneath a veneer of fear and lies. Victims knew they had been hurt, but, because of fear and shame, did not know how or whether to share their experiences.<sup>340</sup>

If some detectives later adopted a more aggressive posture—and there is some evidence that they did—the link between questioning and tainted results is nonetheless lacking. The value of the “Meyers tape” is circumscribed by the simple fact that on the “tape,” detectives never so much as mention Jesse Friedman, and it is impossible to assess demeanor from a partial transcript thrice-removed from the actual “tape.” Excerpts from Detective Squeglia’s interview, fifteen years after the fact, cannot be used as conclusive proof of tactics used by all detectives, by most—or, even, by Detective Squeglia, based on the conflicting accounts offered during the interview. And, though the record shows that some students reported feeling pushed to disclose, only two, Witness 1 and [REDACTED], said that police specifically suggested answers to interview questions. Even then, neither bowed to this pressure and falsely disclosed criminal sexual acts.

In hindsight, the investigation was not ideal, but it was a product of its time. In the intervening twenty-five years, methodologies for interviewing child witnesses have evolved. Today, an investigation against the Friedmans would start and proceed differently. But, it has not been shown that the result of that investigation would be any different, or that Jesse’s conviction was “wrongful” as a result.

#### **B. The Review Team Found No Credible Evidence that Hypnosis Was Used on Any Complainant**

In a brief submitted to the Advisory Panel, Jesse Friedman claims that “at least one of the complainants did not assert that he had been abused until after he was subjected to hypnosis.”<sup>341</sup> Only one complainant makes such a claim, and there is no reason to credit even this allegation. Rather, the record demonstrates conclusively that no students gave incriminating accounts after being “hypnotized” or subjected to other potentially distorting influences.<sup>342</sup>

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<sup>340</sup> In fact, the research also establishes that there is an extremely high rate of non-disclosure among children who have been sexually abused. According to one study, “fifty-seven percent of children with a sexually transmitted disease failed to disclose abuse when questioned.” Thomas D. Lyon, *The New Wave in Children’s Suggestibility Research: A Critique*, 84 CORNELL L. REV 1005, 1047-48 (1998) (citing Louanne Lawson & Mark Chaffin, *False Negatives in Sexual Abuse Disclosure Interviews: Incidence and Influence of Caretaker’s Belief in Abuse in Cases of Accidental Abuse Discovery by Diagnosis of STD*, 7 J. INTERPERSONAL VIOLENCE 532, 537 (1992)). Another found that “forty-nine percent of children with medical evidence strongly indicative of sexual abuse failed to disclose abuse.” *Id.* (citing David Muram *et al.*, *Genital Abnormalities in Female Siblings and Friends of Child Victims of Sexual Abuse*, 15 CHILD ABUSE & NEGLECT 105, 108 (1991)).

<sup>341</sup> Submission of Jesse Friedman to the Friedman Case Review Panel (Mar. 2, 2012), at 32.

<sup>342</sup> *Cf. Friedman*, 618 F.3d at 151.



## 1. Doctors Denied That Hypnosis Elicited Charges

The Review Team found that many complainants were referred to North Shore Hospital for treatment. Whether or not all victims sought treatment is not known. Of the North Shore team, some of the doctors spoke to the Review Team. One, Dr. Sandra Kaplan, has since passed away, preventing inquiry into the role she played<sup>343</sup>—though Dr. Pelcovitz, her former colleague, told the Review Team that they referred patients to Dr. Williams for hypnosis, and did not perform it themselves. Dr. Joyce W. Parks, Ph.D., Witness 2’s treating psychologist, also passed away recently, but not before signing an affidavit in 2004 stating that she never hypnotized Witness 2.<sup>344</sup> These are the only treating doctors of whom the Review Team is aware.

In 1987, Dr. David Pelcovitz, Ph.D., was the director of psychology for North Shore University Hospital, in Manhasset, where he specialized in treating victims of sexual abuse. In this capacity, Dr. Pelcovitz played a significant role in treating victims of the Friedmans. Today, he is the Gwendolyn and Joseph Straus Chair in Psychology and Jewish Education at Yeshiva University’s Azrieli Graduate School of Jewish Education and Administration.

Dr. Pelcovitz stated categorically that he never used hypnosis in his treatments of the Friedman victims. However, he acknowledged that hypnotherapy was believed to be an effective treatment in the late 1980s. He further recalled that, after the case concluded, he referred three to five children to Dr. Daniel E. Williams, Ph.D., in the hope that Dr. Williams could use hypnosis to help children recall memories of abuse that he believed them to be suppressing. In turn, Dr. Williams recalled that, though he administered hypnotherapy to approximately three non-complainant children on Dr. Pelcovitz’s referral, the treatment did not result in the “recovery” of any memories.<sup>345</sup> He knew nothing of the allegations in the case, only that they were sexual in nature, and met only once with any patients referred for hypnosis, and none yielded results.

## 2. The Only Witness Account to Describe Hypnosis Is Not Reliable

In an interview conducted for *Capturing the Friedmans*, Witness 2 discusses hypnosis. There, he explains that “the actual first time I actually recalled I was actually molested” was under hypnosis.<sup>346</sup> This statement formed the basis for the Second

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<sup>343</sup> Dr. Kaplan passed away in July of 2010, before the Second Circuit decided Jesse’s case. See *Obituary: Sandra Kaplan*, N.Y. TIMES, Jul. 25, 2010.

<sup>344</sup> See Affidavit of Joyce Parks (Apr. 14, 2014).

<sup>345</sup> Though New York law bars the admission of memories “recovered” through hypnosis, a witness who has previously been hypnotized may testify to those events that he recalled before he was hypnotized. *People v. Hughes*, 59 N.Y.2d 523, 541-42, 545 (1983). Thus, even if hypnosis had pre- rather than post-dated the conclusion of the case, New York law would recognize the complainants’ pre-hypnosis memories as reliable and admissible in judicial proceedings. See *id.*; see also *People v. Schwing*, 9 A.D.3d 685, 685-86 (3d Dept. 2004) (applying this general rule).

<sup>346</sup> A621, transcript of interview with Gregory Doe.

Circuit's belief that hypnosis somehow affected the case. But, a look at the remainder of the interview, in its unedited form, reveals an account that is dramatically different.

In the same interview, the student says that he “gave [the police] a statement” on the “very first night” he spoke with them.<sup>347</sup> He was only hypnotized, he says, “three weeks later,” though his parents put him in therapy “right away.”<sup>348</sup> Witness 2 stood by this timeline in a later interview with *Newsday*, in which he also claimed that the film's presentation of his statements was “twisted”:

*[Witness 2] said he does not need hypnosis to remind him of what the Friedmans did to him. His family sent him to a private therapist after he provided his statement to police but prior to his appearance before the grand jury. The therapist used hypnosis, he said, to try and get him to the point where he could talk about what had been done to him without throwing up.*<sup>349</sup>

In a recent interview with the Review Team, Witness 2 suggested that he was not sure if hypnosis pre- or post-dated his interviews with police, and he seemed unclear when asked about what hypnosis actually entailed. He described it as relaxing and staring at cards.

The film's presentation of Witness 2 omits almost all of the witness's account concerning sexual abuse and hypnosis, and highlights only the brief portion in which he claims he was hypnotized before speaking with the police. For example, one would not know from *Capturing the Friedmans* that Witness 2 described the effect the case had on him in great detail. In the full interview, Witness 2 states that he threw up for three days after he first disclosed the abuse to police, and that he developed an anal fissure after being sodomized by the Friedmans.<sup>350</sup> Regardless, due to the inconsistencies underlying Witness 2's statements, it would be perilous to rely on him to establish any concrete “fact” about whether, or when, hypnosis was used. Instead, it is more sensible to rely on the results of interviews with Drs. Pelcovitz and Williams, and the affidavit of Dr. Parks, Witness 2's treating therapist, to conclude that hypnosis was not used to generate incriminating statements.<sup>351</sup>

### 3. Nothing Else Suggests That Hypnosis Was Ever Used

In communications with the Review Team, Andrew Jarecki and Jesse's attorney, Ron Kuby, suggested that records of an academic conference would prove that

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<sup>347</sup> A629.

<sup>348</sup> A622.

<sup>349</sup> Victor Manuel Ramos, *Challenging 'Friedmans': Out of the Shadows*, *NEWSDAY*, A5, Feb. 29, 2004.

<sup>350</sup> A623, 625-26. Witness 2 re-affirmed this medical claim in a recent interview, as did his parents, separately. But neither Witness 2 nor his parents remembered the name of the physician who diagnosed this condition, and as a result, the Review Team has not been able to independently confirm it.

<sup>351</sup> See Parks Aff. ¶ 4.

psychologists associated with the case used hypnosis to prepare witnesses for their appearances before the grand jury. No evidence supports this claim.

Though doctors associated with the case undeniably made some presentation to the American Academy of Child & Adolescent Psychiatry (AACAP),<sup>352</sup> very few records of the event still exist. Some were lost when, early in the last decade, AACAP produced a set of documents to an unknown attorney.<sup>353</sup> The documents were never returned.<sup>354</sup>

Those documents that do remain on file with AACAP do not support Jarecki's claim. Instead, in one transcribed presentation, treating doctors describe "group therapy" sessions conducted with the parents of victims, not the victims themselves. The transcript terminates immediately before a subsequent presentation by Dr. Dan Williams, and the prospect of hypnosis as a preparatory tool is simply never discussed. Another presentation, transcribed in Arline Epstein's notes, states only that the Friedmans' victims showed some symptoms of disassociation and emphasized the buttocks when asked to draw the human body.<sup>355</sup>

#### 4. Evidence Demonstrates That Group Therapy Did Not Begin Until After the Third Indictment

"Group therapy"—another treatment discussed by Jesse Friedman's advocates, in which groups of victims, together and at the same time, discuss their memories—can also be excluded as a potential distorting influence on the investigation. News coverage suggests that large-scale group therapy took place at the close of the Friedman case, but not before.<sup>356</sup> The first press mention of any such organized therapy, for instance, dates to November 3, 1988,<sup>357</sup> a year after the federal investigation began, and states that group therapy would begin two weeks later, on November 16, 1988. Assuming this schedule was adhered to, "group therapy" did not begin until nine days after the third and last indictment issued, and just prior to Jesse Friedman's decision to plead guilty.

Information from eyewitnesses confirms that "group therapy" occurred too late to influence the case against Jesse Friedman. According to Arline Epstein's notes, group therapy did not begin until December 7, 1988, nine months after the second indictment was issued, and a month after the third indictment was handed up by a grand jury.<sup>358</sup> In interviews, Dr. Pelcovitz acknowledged that he led approximately twenty group therapy sessions, but stated that he is certain that they began only after all testimony in the case

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<sup>352</sup> A617-19, abstract of presentations to AACAP conferences.

<sup>353</sup> Email from Maureen DuBois, Director of Human Resources & Operations, American Academy of Child & Adolescent Psychiatry, to Ames Grawert, Assistant District Attorney, NCDA (June 22, 2012).

<sup>354</sup> *Id.*

<sup>355</sup> See generally A884-904.

<sup>356</sup> See Alvin E. Bessent, *Little Joy in Victory for Boys' Families*, *NEWSDAY*, Jan. 25, 1989, 1989 WLNR 219053 (observing that Jesse's victims were, by this point, in organized therapy).

<sup>357</sup> See *Temple Beth El's Meeting on Child Sex Abuse Slated for November 16*, *GREAT NECK RECORD*, Nov. 3, 1988.

<sup>358</sup> See A868-69, notes from Nov. 16, 1988 panel at Temple Beth-El.

had been given. In fact, Dr. Pelcovitz remembered being specifically asked by the District Attorney's office and by Detective Sergeant Galasso to postpone such treatment until after the case concluded. Initially, he forcefully disagreed with this decision, because he believed it was contrary to medical ethics to allow a patient to suffer, but says he eventually assented when pressed by his then-superior, Dr. Kaplan.

Although Jesse Friedman's affidavit in support of his habeas petition describes the occurrence of widespread group therapy, his descriptions actually depict something else.<sup>359</sup> Jesse's affidavit describes a school principal inviting students to talk to him if necessary, and a school psychologist asked to "be on the look-out for unusual behavior."<sup>360</sup> Jesse's submission also appears to conflate group *therapy* with community meetings convened by the citizens of Great Neck. The latter undeniably took place between December 1987 and January 1988, but were held to instruct *parents* on how to recognize symptoms of abuse, rather than to coach children through their experiences.<sup>361</sup>

The record strongly suggests that witnesses began seeing therapists on an individual basis early in the prosecution. One article, for example, implies that some children sought therapy shortly after the November 25, 1987 search warrant and arrests.<sup>362</sup> Additionally, a "commendation letter" sent by Detective Sergeant Fran Galasso states that her investigators "cooperated with teams of psychiatrists and psychologists involved in the treatment of victims."<sup>363</sup> The letter was transmitted in May 1988, between the second and third indictments,<sup>364</sup> goes into no further detail, and does not make clear whether testifying victims were exposed to therapy.

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In short, there is no evidence that either hypnosis or "group therapy" materially affected the Friedman case in any way. The extent to which victims began treatment in individual therapy sessions before the case concluded is unknown, but law enforcement officers cannot control a family's private decision to seek treatment for a victimized child. Therapy is a valuable tool that, in many cases, is critical to a victim's recovery. And, based on the compressed timeline of the investigation, nothing suggests that it influenced the case against Jesse Friedman one way or the other.

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<sup>359</sup> Friedman Aff. ¶ 30.

<sup>360</sup> *Id.*

<sup>361</sup> See William S. Dobkin, *Great Neck Community Marshals its Resources to Deal with Child Abuse and Child-Sex Crime*, GREAT NECK RECORD, Feb. 4, 1988.

<sup>362</sup> Kathy Boccella, *Parents Seek Therapy for Abuse Victims*, NEWSDAY, Nov. 29, 1987, 1987 WLNR 188022.

<sup>363</sup> A298, letter from Detective Sergeant Fran Galasso, Commanding Officer, NCPD Sex Crime Squad, to Chairman of Committee of Awards, NCPD (May 2, 1998), at ¶ 13.

<sup>364</sup> A294, at ¶ 1.

### C. The Record Does Not Support a Finding of Improper Judicial Coercion

The evidence similarly fails to support Jesse's claim that Judge Abbey Boklan<sup>365</sup> used the threat of an unfairly harsh sentence to induce his plea. Although Judge Boklan warned Jesse that he faced a substantial sentence, that admonition was self-evident, and never crossed or even strained the bounds of propriety.<sup>366</sup> Nor was Judge Boklan, as Jesse now claims, hopelessly biased against the Friedmans. Denying the prosecution's motion, Judge Boklan declined to set new bail after the Friedmans were arraigned on the second and third indictments.<sup>367</sup> She also dismissed counts from the indictments when, in her opinion, they appeared unsupported by the People's evidence.<sup>368</sup> There is no evidence to support the conclusion that Judge Boklan was biased.

#### 1. No Contemporaneous Source Supports a Finding that the Plea Was Coerced

In a pre-plea, transcribed interview conducted with his client, Panaro told Jesse that Judge Boklan "indicated that for each one of the charges that you are convicted of, she would *consider* some consecutive time," a sentence that he speculated could run into hundreds of years, thus ensuring that Jesse would die in jail.<sup>369</sup> However, Panaro clarified matters in the same conversation, as the lawyer's transcription makes clear:

**PP:** *However, haven't I indicated to you and told you time and time again, that no matter how many years Judge Boklan gave to you on a sentence, that the most time you could be incarcerated for in the State of New York would be forty years?*

**JF:** *I'm aware of that.*

**PP:** *And haven't I told you that on many occasions.*

**JF:** *Yes, you have.*

**PP:** *Now, that would mean that if your [sic] were incarcerated now you would come out of jail*

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<sup>365</sup> Judge Boklan passed away during the pendency of this re-investigation.

<sup>366</sup> Cf. *People v. Stevens*, 298 A.D.2d 267, 268 (1st Dept. 2002) (statement that the court would impose the maximum if defendant was convicted after trial was coercive, as it went beyond mere description of sentencing exposure).

<sup>367</sup> A290, memorandum from A.D.A. Joseph Onorato to File, Feb. 9, 1988. Note that the Friedmans were initially held on high bail, which was reduced on appeal. Robin Topping, *Court Lowers Bail in Sex Abuse Case*, *NEWSDAY*, Dec. 2, 1987, 1987 WLNR 197789. However, that initial amount was set by District Court Judge Richard LaPera, not Judge Boklan. *Metro Dateline*, N.Y. Times, Nov. 27, 1987, available at <http://www.nytimes.com/1987/11/27/nyregion/metro-dateline.html>.

<sup>368</sup> See A394-405.

<sup>369</sup> A366 (emphasis added).

*when you're fifty-nine years old. Do you understand that?*<sup>370</sup>

In fact, in 1988, the sentence for a Class B violent felony, such as Sodomy in the First Degree, carried a minimum of two to six years' imprisonment, and a maximum of eight-and-a-third to twenty-five years. By statute, had Jesse been convicted of only a few such felonies, a forty-year sentence could have resulted from as few as *two*, not *hundreds*, of consecutive sentences.<sup>371</sup>

In an affirmation attached to his 2004 post-conviction motion, Peter Panaro stated that Judge Boklan threatened to sentence Jesse Friedman to “consecutive terms of imprisonment for *each* count that he was convicted on.”<sup>372</sup> This document, however, was prepared in 2004 for post-conviction litigation, and conflicts with the description that Panaro himself recorded while the case was ongoing. Panaro had no reason to dissemble, or soften such a harsh threat, in a pre-plea interview with Jesse designed to probe the basis of his decision to plead guilty. Nor does any other evidence support a theory of coercion. In *Capturing the Friedmans*, Elaine Friedman remembers Judge Boklan threatening to sentence Jesse to three consecutive terms,<sup>373</sup> a highly specific memory that is unsupported by any other evidence. In a contemporaneous journal entry, David Friedman recorded that Judge Boklan suggested “if [Jesse were] convicted after trial, she would probably run the time consecutively instead of concurre[nt].”<sup>374</sup> One of Jesse's letters expresses his belief that Judge Boklan “seems to despise me,” and that “she says she will give me harsh consecutive time.”<sup>375</sup>

## 2. Capturing the Friedmans Misrepresents Judge Boklan

Panaro's recorded conversation with Jesse indicates that the judge made a conditional statement, tying the likely sentence to the outcome of trial. An interview conducted by Andrew Jarecki, in preparation for *Capturing the Friedmans*, further undercuts the claim that Judge Boklan threatened Jesse with severe jail time without regard to the evidence. A review of the full, unedited transcript of Jarecki's interview shows that Judge Boklan specifically rejected that idea:

*[A]n attorney will say to me, “If my client goes to trial, as opposed to taking this plea, are you gonna punish them with a greater sentence?” And I say, “**I don't punish him for going to a trial.**” But once I hear— once I hear what really happened— or if your client commits perjury— or,*

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<sup>370</sup> A367.

<sup>371</sup> The maximum sentence Jesse could have faced was fifty years in prison, even if the sentences were run consecutively. See N.Y. PENAL LAW § 70.30(1)(a)(ii)-(iii) (McKinney 1986).

<sup>372</sup> See Panaro Aff. ¶ 11 (emphasis added).

<sup>373</sup> See A240.

<sup>374</sup> See A415, excerpt 2.

<sup>375</sup> A442.

*anything that can happen during the course of— of a trial,  
who knows what I’m gonna sentence him.*<sup>376</sup>

This excerpt was never aired in the film, and went unmentioned in both Jesse Friedman’s post-conviction pleadings, and in the Second Circuit’s opinion, which accepted as true Jesse’s assertion that Judge Boklan “threat[ened] to impose the highest conceivable sentence for each charge” upon which he was convicted.<sup>377</sup>

To support that claim, Jesse’s advocates and the *Capturing the Friedmans* filmmakers point to a different excerpt from Jarecki’s 2003 interview with Judge Abbey Boklan, in which the Judge allegedly revealed a strong bias against Jesse Friedman. But that excerpt misrepresents the thrust of the Judge’s interview, as shared with the Review Team, and may have been edited to convey a misleading impression. Compare the version of Judge Boklan’s interview that aired in *Capturing the Friedmans*, with another statement made by Judge Boklan to Jarecki’s interview team:

**Judge Boklan, in *Capturing the Friedmans***

**“There was never a doubt in my mind as to their guilt. . . .** And remember, I’d been around for a while. This wasn’t, you know, the first sex case that I had ever seen. In fact, my previous law secretary used to tease me that we were the pervert part. And having been, you know, head of the Sex Crimes Unit myself where, you know, I had young boys who were sodomized, in fact, one who killed himself, you know, after the sentence of the abuser. I mean, some horrible experiences. So for me to be so outraged. I mean this was really very, very bad what was going on there. It was like someone’s worst nightmare. Who would even think of, of doing these things? And to do them in a group with so many witnesses.”<sup>378</sup>

This statement may appear, in this sequence, in some interview with Judge Boklan. But it does not appear in any of the interview transcripts that Jarecki provided to the District Attorney’s office and the Court during Jesse’s post-conviction litigation, nor does it appear in any transcript shared subsequently with the Review Team.

Compare it with the below:

**Judge Boklan, transcript of a longer interview with the filmmakers, not aired in *Capturing the Friedmans* (A629-733)**

**“There was never a doubt in my mind as to their guilt.** First of all, I knew that all the children had been interviewed separately. The stories were extremely consistent. I had the opportunity to read the grand jury minutes, where these young children testified, as well as the young codefendant who we’ve previously discussed, who was testifying— against

<sup>376</sup> A728 (emphasis added).

<sup>377</sup> *Friedman*, 618 F.3d at 158.

<sup>378</sup> A170-71.

them.

The stories were consistent with each other. And consistent with the evidence that was found in the federal search warrant. When the children talked about certain videos they had seen, certain pornographic literature that they had been shown-- and you know, I had all those years of experience as an assistant district attorney, and in the sex crimes unit, when I dealt with young children. And it just rang true.

Then, of course, I have a defendant standing out there, and answering ‘Yes, yes, yes. Yes, I did all of those charges.’ Maybe there is a temptation to plead guilty to a minor charge with a very light sentence, even if you’re not guilty, because you’re so afraid of exposure. But . . . I don’t think someone’s going to just do that— very lightly, unl— unless they’re guilty.

Also— Arnold was a very educated man. This was not some young person who was being intimidated, who didn’t know what he was doing, who didn’t understand what he was facing. So, as I said, I— I was very comfortable with accepting the pleas that they were guilty. And I was very comfortable with sentencing them to long periods of incarceration.”<sup>379</sup>

The excerpts share a single line: “there was never a doubt in my mind as to their guilt.”

Unless Judge Boklan used those precise words in two separate interviews, to the same interviewer, it is highly unlikely that the version presented in *Capturing the Friedmans* accurately represents what Judge Boklan actually said. It seems more likely that *Capturing the Friedmans* edited the interview to convey the impression that Judge Boklan tied her confidence in Jesse’s guilt to her own biases, rather than the evidence she saw during pretrial practice. Indeed, in the film, Judge Boklan is never shown speaking the critical line, “there was never a doubt in my mind as to their guilt.” Instead, audio of her statement plays over courtroom footage. Only as she begins the next sentence—“and remember, I’d been around for a while”—does the film show Judge Boklan speaking.<sup>380</sup> This portion of the film, offered as evidence of Judge Boklan’s alleged bias against Jesse Friedman, results from an interview conducted fifteen years after the fact. But even this is a product of selective editing, and the only other evidence of bias comes from self-serving statements made by Jesse and his attorneys during motion practice.

As in the case of Jesse Friedman’s plea, the minutes of his sentencing were also not available to the Review Team. But in a recent interview with the Review Team before her death, Judge Boklan denied that she ever issued any “threat” to Jesse Friedman. She explained that she advised the Friedmans about the maximum sentence they were facing, and that the maximum sentence was, as in all cases, a possibility, depending on factors that would emerge during trial. She noted that this is standard practice. She also clearly

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<sup>379</sup> A650-51.

<sup>380</sup> See A170-71. In the film, this excerpt begins approximately at timestamp 31:27.



stated that she has never said, and would never say, that a defendant would be penalized simply for exercising his constitutional right to trial, regardless of the proof at that trial. Instead, Judge Boklan remembered sympathizing with Jesse Friedman's plight. She felt that Jesse, as a victim of his father's abuse, "had no chance" for normalcy. Judge Boklan's own law secretary, Scott Banks, a former public defender, confirmed that nothing in the lead-up to Jesse Friedman's plea bargain offended his sense of fairness. Judge Boklan, he said, was known to sentence harshly, but never unfairly.

### 3. The Court's Conduct Did Not Amount to Coercion

A fair reading of the facts indicates that Judge Boklan likely warned Jesse Friedman that a trial in which he was found guilty could, depending on the strength of presented testimony, result in a harsh sentence involving consecutive periods of incarceration. While a judge's unconditional threat to impose the maximum sentence on a defendant following trial is sufficiently coercive to warrant overturning a guilty plea,<sup>381</sup> judges are allowed to warn defendants of the maximum sentence they could face if the evidence supports all the charges.<sup>382</sup> Indeed, in cases of this magnitude, a sentence that included consecutive prison terms would not have been uncommon, let alone excessive.

Absent evidence of undue coercion, the criminal justice system and the public are entitled to rely on the integrity of Jesse Friedman's guilty plea, knowingly and voluntarily made in open court. "It is well settled that plea bargaining is 'a vital part of our criminal justice system,'" intended to guarantee the speedy resolution of criminal cases, and afford both the prosecutor and the accused a guarantee of finality.<sup>383</sup> Pleas represent compromises,<sup>384</sup> in which the defendant is "convicted with his own consent" in return for a lighter prison sentence, or the prosecution's promise to drop counts of the indictment.<sup>385</sup> Necessarily, this bargaining process implies a level of "situational coercion."<sup>386</sup> In many cases in which a defendant does not admit guilt, but goes to trial, he will face more substantial charges, the possibility of greater prison time, or both.<sup>387</sup> But this does not cast doubt on the validity of the plea process. In all but the most exceptional cases—which this is not—the guilty plea is "conclusive."<sup>388</sup>

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<sup>381</sup> *People v. Richards*, 17 A.D.3d 136, 137 (1st Dept. 2005).

<sup>382</sup> *People v. Coleman*, 8 A.D.3d 825, 826 (3d Dept. 2004) ("That defendant may have been apprised of his sentencing exposure cannot be a basis for finding coercion.").

<sup>383</sup> *People v. Bradshaw*, 18 N.Y.3d 257, 264 (2011) (quoting *People v. Seaberg*, 74 N.Y.2d 1, 7 (1989)).

<sup>384</sup> *People v. Taylor*, 65 N.Y.2d 1, 5 (1985).

<sup>385</sup> *People v. Parris*, 4 N.Y.3d 41, 49 (2004).

<sup>386</sup> *People v. Seaberg*, 74 N.Y.2d 1, 8-9 (1989); see also *People v. Buskey*, 62 A.D.3d 1164, 1165 (3d Dept. 2009) (holding that the defendant's "assertion that he felt pressured into entering a plea amounts to 'situational coercion,' which is unavailing") (citations omitted).

<sup>387</sup> See, e.g., *People v. Nixon*, 21 N.Y.2d 338, 350 (1967) (observing, before affirming the lower court's denial of a motion to withdraw a plea, that the defendant's plea to a lesser offense than the murder charged was "quite understandable"); see also *People v. Wolf*, 88 A.D.3d 1266, 1267 (4th Dept. 2011) ("[t]he fact that the possibility of [additional charges] may have influenced defendant's decision to plead guilty is insufficient to establish that the plea was coerced") (citation omitted; alterations in original).

<sup>388</sup> *Kercheval v. United States*, 274 U.S. 220, 223 (1927).

The law intends that a defendant's decision to plead guilty should be a meaningful act, providing the victims and the public with some confidence that the case has concluded and justice been done. In light of Jesse's other confessions, to his attorney, and to a television audience, there was no reason, until 2003, to believe the case had not concluded properly.

4. Contrary to Jesse Friedman's Assertions, He Fully Participated in his Defense, and Was Not Forced into a Plea by his Family

The record further shows that Jesse Friedman was not coerced into pleading guilty. Rather, the evidence overwhelmingly demonstrates that Jesse Friedman's guilty plea was entered knowingly, voluntarily, and intelligently, after securing competent advice from an effective attorney who was clearly devoted to advocating for his client's best interests.

A careful review of records from the critical period between March and December of 1988 allows some reconstruction of the path that led from Arnold Friedman's guilty plea, through the third indictment, and to Jesse Friedman's own guilty plea. The picture that emerges is not, as Jesse and his advocates have suggested, one characterized by the domination of external forces. Rather, primary sources show Jesse Friedman, his family, and his counsel as makers of their own destiny. Jesse pled guilty because his own efforts showed it to be the optimal strategy in light of the choices available to him, not because someone else forced him to do so. Throughout his prosecution, Jesse Friedman played an active role in his own defense. In family meetings, Jesse led lively debates about the family's litigation strategy. In one, he urged his family to "try the case in the media."<sup>389</sup> In other conversations, Jesse discussed a variety of strategies, such as subjecting "every" student to cross-examination and exploiting all inconsistencies. One overriding topic of conversation was the benefit to Jesse of his father's guilty plea. Jesse believed that he could escape a guilty verdict only if he avoided being saddled with his father's acknowledged history with child pornography. He considered in detail which scenario would benefit him the most: having his father plead guilty, or sitting next to him, with Arnold Friedman looking "like a guilty old man"<sup>390</sup> proclaiming his innocence.

When Arnold did ultimately plead guilty, Jesse interviewed as many as thirty-four potential attorneys<sup>391</sup> before hiring Peter Panaro. Once Panaro was retained, Jesse and his brother David helped him locate potential witnesses, even going so far as to set up his meeting with Witness 28.<sup>392</sup> For his part, Panaro actively pursued a number of case strategies, but his options to develop a defense were limited by the facts of Jesse's case. Panaro began by seeking witnesses willing to testify in Jesse's defense but, judging from notes made by Arnold Friedman, found himself with only a single prospective witness

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<sup>389</sup> A223.

<sup>390</sup> Audio recorded discussion between Arnold, David, Elaine, Jesse, and Seth Friedman (Mar. 24, 1988), preserved as a transcript of "Tape 6, Disk 8," track 1.

<sup>391</sup> A364. Jesse told the Review Team that he interviewed at least twenty attorneys.

<sup>392</sup> A359.

(Witness 28) arrayed against the District Attorney's thirteen testifying victims.<sup>393</sup> As recorded in David Friedman's journal, area families, whether complainants or otherwise, simply did not wish to speak with or support the Friedman family in any way:

*The other kids in class w/ no charges aren't talking to us. They're yelling at us and not helping us. Also one said that if asked, would say that something happened. This person wasn't approached by police. (by [sic] he was by friends in school)*<sup>394</sup>

As explained by Arnold Friedman's attorney in *Capturing the Friedmans*, "the hope was that one or more of these people would say, 'this [sexual abuse] is just not true.' But that just didn't happen."<sup>395</sup>

Panaro also retained mental health experts to assist in the defense. But the conclusions drawn by his hand-picked experts were discouraging, and Jesse's performance on two different lie detector tests indicated deception.<sup>396</sup> Failing on these fronts, Panaro proceeded to consider and reject a wide variety of trial strategies, which he chronicled in a thorough interview with Jesse Friedman,<sup>397</sup> summarizing every step taken during his representation. In all, Jesse considered the following defenses, as transcribed by Peter Panaro:

- **Complete innocence:** "the defense that the children were never abused and that the allegations of which they complained never happened."
- **Coercion:** "anything that may [have] happen[ed] was the result of your father coersing [sic] you into doing what the children allege you did." Panaro described discussing this defense on "thirty occasions."
- **Moral panic:** "all of the children are reacting hysterically to something that never happened and they are starting to believe that it happened themselves, and that this is nothing more than a witch hunt." Panaro described considering this defense on "approximately twenty-five occasions."
- **Insanity:** apparently considered on at least "fifty occasions," Panaro appeared to suggest that he enlisted the psychiatrists and psychologists referenced above to support this type of defense.
- **Multiple personality:** "the fact that you may truly believe that you did not do these acts as charged, and that you are convinced that you did not do

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<sup>393</sup> See *supra* note 78.

<sup>394</sup> A419, excerpt 4 (emphasis in original).

<sup>395</sup> A203.

<sup>396</sup> See Section I.J.2, *supra*.

<sup>397</sup> This interview also suggests that Panaro believed either that Jesse must acknowledge his guilt before pleading guilty, or that Panaro feared Jesse was capable of saying anything, even that Panaro coerced him into pleading guilty. Indeed, as early as April 1989, Jesse claimed that he pled guilty in part because Panaro simply "refuse[d] to accept the truth" of Jesse's innocence. A474.

them, but that it may be a Dr. Jekyll and Mr. Hyde type of personality.” Panaro describes considering this, too, extensively, “on approximately thirty occasions.”

Throughout, the only exculpatory witness discussed was Witness 28.<sup>398</sup> According to Panaro, even though Arnold wrote repeatedly to offer to serve as a defense witness, Jesse ultimately decided it was not in his best interests. Though Jesse’s options were few, it was he, and no-one else, who balanced those options and chose to plead guilty. None of this suggests coercion.

As a final point, it bears noting that, if Jesse believed in 1988 that his plea had been coerced, whether by his attorney, the trial court, or his family, it was well within his power to take steps to vacate his plea at that time. In fact, Jesse’s closest friend in prison—an inmate named Charles Fedora, who told the Review Team that Jesse was his “best friend”—had himself successfully withdrawn a guilty plea.<sup>399</sup> Fedora explained to the Review Team that, in his case, he had pled guilty to end threats made by the community against his parents. He told the court this, he said, which then accepted his guilty plea without inquiry. As a result of a deficient plea allocution, the Fourth Department overturned his plea, and allowed him to proceed (unsuccessfully) to trial.<sup>400</sup> Though Jesse helped Fedora prepare an appeal from his conviction following that trial, Jesse never chose to apply the same legal skills to his own case.

##### 5. Panaro Had Ample Material With Which to Prepare a Defense

In an affidavit submitted with Jesse’s petition for a writ of habeas corpus, Panaro said he was unable to locate any exculpatory witnesses beyond Witness 28.<sup>401</sup> However, he attributed this failure to (1) the prosecution’s refusal to produce exculpatory evidence as required under governing precedent;<sup>402</sup> (2) the punitive revocation of Arnold Friedman’s bail in response to his own attempts to locate defense witnesses; and (3) the NCPD’s decision to confiscate the only copy of Arnold Friedman’s class roster.<sup>403</sup>

Even in Panaro’s affidavit, there is nothing to substantiate the claim that Arnold Friedman’s bail was revoked in response to his attempts to prepare his own defense. In fact, the opposite occurred. Though the prosecution did seek to impose a new bail requirement on Arnold Friedman in response to the filing of the second indictment, the motion was unsuccessful.<sup>404</sup> Moreover, Panaro’s *post hoc* explanation is undermined by

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<sup>398</sup> A358-59.

<sup>399</sup> *People v. Fedora*, 154 A.D.2d 918, 918 (4th Dept. 1989). After overturning his plea, Fedora went to trial, lost, and was sentenced to prison, where (he says) he met Jesse Friedman in 1990. Thereafter, Fedora appealed again, this time unsuccessfully. *People v. Fedora*, 186 A.D.2d 982, 983 (4th Dept. 1992). Presumably it is this appeal that Jesse helped him prepare.

<sup>400</sup> *See Fedora*, 154 A.D.2d, at 918.

<sup>401</sup> Panaro Aff. ¶ 15.

<sup>402</sup> *See, e.g., Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>403</sup> *See* Panaro Aff. ¶ 15.

<sup>404</sup> *See* A290.

documents demonstrating that he had ample opportunity to identify and contact defense witnesses. One paper found in Panaro's possession lists, in Arnold Friedman's handwriting, the names and contact information of no less than thirty-five potential witnesses.<sup>405</sup> Panaro also received a list of Jesse Friedman's accusers at least one month prior to the entry of Jesse's guilty plea,<sup>406</sup> which—in addition to Arnold and Jesse Friedman's memories of the class—would further have guided any outreach attempt to students who were not complainants, but present during classes in which abuse was alleged to have occurred. Even in *Capturing the Friedmans*, Jesse acknowledged that he was able to build a “database” that allowed him to sort records by “complainant, by time period, by nature of charge,” and draw conclusions based on what he found.<sup>407</sup>

The Review Team examined the claim that Jesse and his lawyer were denied information they needed to mount a defense,<sup>408</sup> such as the names of children who, though they were enrolled in classes where abuse was alleged, saw nothing; and, the names of children who were identified by others as victims, but made no complaint. To the extent that such information was not disclosed to Jesse before he pled guilty, it did not violate his Due Process rights. That type of information, if considered *Brady* material, must be disclosed prior to trial to ensure that a defendant receives a fair trial.<sup>409</sup> Disclosure is not required prior to a guilty plea. By pleading guilty, a defendant waives his right to *Brady* material.<sup>410</sup>

Further, on the record available to the Review Team, it is not clear whether any such information would have affected Jesse's decision to plead guilty. Even if Jesse Friedman had known with certainty that witnesses who should have seen something nonetheless claimed that they did not—such as in the case of Witness 25—the effect this would have had on Jesse Friedman's decision to plead guilty is unknowable, and likely minimal. Any information that Jesse lacked was cumulative, and added little to the exculpatory information already in his possession when he pled guilty. From the “Meyers tape,” Jesse already knew, for example, that some witnesses had named Witness 28 as a victim, but that Witness 28 himself denied it. From the same source, Jesse also had evidence of questionable interviewing tactics.

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<sup>405</sup> See A301-02.

<sup>406</sup> See A344-45.

<sup>407</sup> A231-32.

<sup>408</sup> Though it is discussed in Panaro's affidavit, Jesse did not raise this claim during post-conviction litigation. The claim is considered here as part of the Review Team's mission to examine all possible sources of error.

<sup>409</sup> See *Friedman*, 618 F.3d at 154-55 (denying Jesse's claim, “Even if [allegedly withheld] evidence comes within *Brady*'s broader definition of exculpatory evidence”).

<sup>410</sup> See *People v. Day*, 150 A.D.2d 595, 600 (2d Dept. 1989) (“the items not produced by the prosecution . . . go to the issue of factual guilt, which, while appropriate for litigation at a trial, are waived by a plea of guilty”); see also *People v. Phillips*, 30 A.D.3d 621, 621-22 (2d Dept. 2006) (“By pleading guilty, the defendant forfeited his right to seek review of any alleged *Rosario* or *Brady* violation”); *People v. Thompson*, 174 A.D.2d 702, 704 (2d Dept. 1991) (“by pleading guilty, the defendant waived any alleged *Brady* violation resulting from the prosecutor's purported failure to disclose the autopsy report”).

By the time of his plea, Jesse had conducted his own outreach to potential witnesses, hoping “that one or more of these people would say, ‘This [the prosecution’s case] is just not true.’ But that just didn’t happen.”<sup>411</sup> He had also learned the names of the prosecution’s witnesses, both through his own research<sup>412</sup> and from the prosecution’s disclosure, and used this knowledge to conclude correctly that some complainants had re-enrolled in his father’s class after having been allegedly abused.<sup>413</sup> By reading the indictments, Jesse would have known that some witnesses had testified before two grand juries, and had described the most severe abuse, or accused him of criminal activity for the first time, only in the third indictment. That information would have provided a potentially valuable line of inquiry on cross-examination.

In addition to the above, Jesse knew that adults—such as Witness 26, Arnold’s assistant in the fall of 1987—were present in some classes, and that two adult witnesses (Suspects 1 and 2) had been questioned but released. A careful review of the *Great Neck Record* and *Newsday* would even have shown that several complaining witnesses had begun individual therapy, and that local healthcare facilities were planning to launch “group therapy” sessions. Even knowing all of this, Jesse still chose to plead guilty, and it is unreasonable to believe that the addition of one or more defense witness would have so altered the total mix of information as to change his decision to plead guilty. Regardless, the issue was waived when Jesse pled guilty.

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In the absence of coercion, which has not been shown, Jesse Friedman’s 1988 guilty plea should have concluded the case. If Jesse believed that his plea *was* the product of illegal coercion, it was within his power to argue that question at any point between 1988 and 2003. That Jesse did not avail himself of this option until fifteen years after the fact, when evidence and memory had grown stale, does and should weigh heavily against the credibility of his claim.

#### **D. This Case is Not Similar to “Moral Panic” Cases**

Advocates for Jesse Friedman attempt to draw a parallel between the case against the Friedmans and the unreliable “moral panic” cases of the 1980s, such as the 1984-90 prosecution of Virginia McMartin and her family for abuses that allegedly took place in their California preschool.<sup>414</sup> But the cases are in no way comparable.

In the McMartin case, more than 200 preschool-age children described suffering sexual abuse at the hands of their teachers, but only after enduring months of highly suggestive questioning by social workers under contract with state prosecutors.<sup>415</sup> The

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<sup>411</sup> A203-03. The quote derives from Arnold Friedman’s own defense lawyer, Jerry Bernstein.

<sup>412</sup> A231-32.

<sup>413</sup> *See id.*

<sup>414</sup> The Second Circuit Court of Appeals also adopted this analogy. *Friedman*, 618 F.3d at 157 n.8.

<sup>415</sup> Robert Reinhold, *The Longest Trial*, N.Y. TIMES, Jan. 24, 1990.

prosecution's prime witness ultimately recanted, more than a decade later,<sup>416</sup> but the case should have been questioned from the start. The initial complaint was made by a paranoid schizophrenic, who claimed that her child's abusers "flew in the air." From that point, the case ballooned to include implausible allegations of what proved to be non-existent cavernous tunnels below the school, in which teachers would molest children as part of satanic rituals.<sup>417</sup>

Though the accusations against Arnold and Jesse Friedman are shocking—and to some, at first blush, may seem to stretch the bounds of plausibility—the witnesses' accounts fit behavioral paradigms common to pedophiles.<sup>418</sup> This case is not about "ritualistic" satanic sexual abuse.<sup>419</sup> The case began with an admitted pedophile, Arnold Friedman, who indisputably collected and traded child pornography, and who admitted in his own words to a history of abuse stretching from his teens into his late adulthood.<sup>420</sup> Nor, the Review Team concludes, was the case influenced by any of the "recovered memories" techniques common to moral panic cases.

Jesse Friedman, too, does not fit the profile of the kindly teacher wrongfully accused by his community. Experts retained by his own trial counsel described Jesse, at the time, as a psychopath, narcissist, and drug abuser who was unable to tell right from wrong. And Jesse's decision to plead guilty stands in stark contrast to the defendants in the McMartin case, who ultimately elected trial despite the staggering sentences that they faced if found guilty.

The facts of the Friedman case also exclude one of the key risk factors in the McMartin case, and others like it—the youth of the victims. Following trial, and the acquittal of most defendants, the McMartin case became a *cause célèbre* among social scientists, and the subject of an often-cited study demonstrating that a battery of interviewing techniques, all drawn from the videotaped interviews of the McMartin "victims," tends to produce false complaints of abuse in a large number of cases.<sup>421</sup> But that study drew from a pool of sixty-six children with a "mean age of 4.3 years,"<sup>422</sup> and acknowledged that its conclusions could be limited to that age group.<sup>423</sup> The vast majority of research on "child suggestibility"—the phenomenon whereby children uncritically accept an interviewer's account of events—focuses exclusively on children aged six

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<sup>416</sup> Margaret Talbot, *The Lives They Lived: Peggy McMartin Buckley, the Devil in the Nursery*, N.Y. TIMES, January 7, 2001, available at <http://www.nytimes.com/2001/01/07/magazine/lives-they-lived-01-07-01-peggy-mcmartin-buckley-b-1926-devil-nursery.html?src=pm>.

<sup>417</sup> *Id.*

<sup>418</sup> See Section IV.D.2, *infra*.

<sup>419</sup> The Second Circuit's discussion of "moral panic" cases focuses on ritualistic abuse, impossible acts, and recovered memory techniques, the common factors in many such cases. *Friedman*, 618 F.3d at 155-56. These were not present in the Friedman case.

<sup>420</sup> See Section I.C, *supra*.

<sup>421</sup> See Sena Garven *et al.*, *More than Suggestion: the Effect of Interviewing Techniques from the McMartin Preschool Case*, 38 J. APPLIED PSYCHOL. 347, 347 (1998).

<sup>422</sup> *Id.* at 350.

<sup>423</sup> *Id.* at 355. But, the researchers hypothesized that the results could translate easily to adults. *Id.*

years or younger, and most researchers acknowledge that older children are not nearly as suggestible as children under six years old.<sup>424</sup> One representative suggestibility study demonstrates a marked fall-off in induced error rate between three- to five-year-olds, six- to ten-year-olds, and (lastly) children older than eleven years old.<sup>425</sup> In the words of another researcher, summarizing and responding to critiques of preschool age suggestibility studies, “preschool research is of substantial use only in cases involving preschool children.”<sup>426</sup> By comparison, the mean age of the accusers in the Friedman case, at the time of the first recorded statement with police, was 10.5 years,<sup>427</sup> placing them squarely outside of the most “suggestible” age range.

Further, suggestibility studies suffer from a number of shortcomings that prevent their easy application as analytical tools in this case. Most suggestibility studies are conducted in an emotionally sterile environment unlikely to be duplicated in the real world.<sup>428</sup> University researchers cannot ethically control for the embarrassment that sex abuse victims may feel,<sup>429</sup> do not always use experiments in which the child is touched,<sup>430</sup> and are especially blind to the effect of threats used by violent abusers to procure a child’s silence.<sup>431</sup> Moreover, researchers caution against overestimating the effects of suggestibility, as children more strongly resist “implantation” of memories that are implausible, salient, or particularly painful.<sup>432</sup>

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<sup>424</sup> Yoojin Chae, *et al.*, *Event Memory and Suggestibility in Abused and Neglected Children*, 110 J. OF EXPERIMENTAL CHILD PSYCHOL. 520, 535 (2011); Amye Warren, *et al.*, *Inducing Resistance to Suggestibility in Children*, 15.3 LAW & HUM. BEHAV. 273, 281-83 (1991) (observing that suggestive interviewing techniques may, in some cases, differentially affect seven- and ten-year-olds); Gail S. Goodman & Rebecca S. Reed, *Age Differences in Eyewitness Testimony*, 10.4 LAW & HUM. BEHAV. 317, 319, 328 (1986). For other studies limiting suggestibility findings to children under the age of six, see Lyon, “New Wave,” *supra* note 340, at 1030-33; see also Thomas D. Lyon, *Applying Suggestibility Research to the Real World: the Case of Repeated Questions*, 65 LAW & CONTEMP. PROBS. 97, 113-14 (2002); Stephen J. Ceci & Richard D. Friedman, *The Suggestibility of Children: Scientific Research and Legal Implications*, 86 CORNELL L. REV. 33, 61-62 (2000).

<sup>425</sup> See Chae *et al.*, *supra* note 424, at 532.

<sup>426</sup> Ceci & Friedman, *supra* note 424, at 62.

<sup>427</sup> Out of the children who reported criminal activity by Arnold, by Jesse, or by both, investigators were able to determine the age of all but one. The mean age of these children at the time of their first documented interviews with NCPD detectives was 10.5. The median age of the children at the time of their first interview was 10. Using the same methodology, the mean age of children who implicated Jesse was 9.94, with a median of 10.

<sup>428</sup> See Lyon, “New Wave,” *supra* note 340, at 1048 (“Emotions like fear, loyalty, and embarrassment are largely absent from the laboratory research documenting high rates of suggestibility, in part because ethical considerations limit what researchers are allowed to inflict upon their subjects.”).

<sup>429</sup> *Id.* at 1048-49.

<sup>430</sup> See Garven *et al.*, *supra* note 418, at 354, 355 (“Furthermore, although most of the allegations [in the study] involved wrongdoing, only one involved touching.”).

<sup>431</sup> See Lyon, “New Wave,” *supra* note 340, at 1049-51, 1060-61.

<sup>432</sup> Livia L. Gilstrap *et al.*, *Child Witnesses: Common Ground and Controversies in the Scientific Community*, 32 WM. MITCHELL L. REV. 59, 71 (2005). Another study concludes that “[s]uggestibility is not simply a matter of age” and that, although preschool-age children are more suggestible than older children, “it is wrong to conclude that a four-year-old is invariably more suggestible than a forty-year-old.” John E.B. Myers, Gail S. Goodman, Karen Saywitz, *Psychological Research on Children as Witnesses:*



Here, NCPD detectives dealt with (1) older children who described being (2) sexually abused (3) by a trusted authority, and (4) then being threatened into silence, all factors for which the research on child suggestibility cannot or does not account. Critically, none of the suggestibility studies proffered by any party to this case, and none of the hysteria-induced prosecutions to which Jesse seeks to compare his case, involved an admitted pedophile.

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The Review Team therefore concludes that the arguments advanced by Jesse Friedman in his initial habeas petition, drawn heavily from *Capturing the Friedmans*, do not bear out upon close inspection. Jesse's post-conviction claims relied primarily on a commercial film. The truth, as the Review Team discovered, is more complex.

#### **IV. Findings of Fact: Newly Discovered Evidence Further Supports Jesse Friedman's Conviction. Unanswerable Questions Raised by His Advocates Provide No Basis For Exoneration**

This Report now considers other evidence uncovered in the aftermath of Jesse Friedman's failed habeas petition. Much of this material is inculpatory. Some evidence raises questions that are difficult or impossible to answer twenty-five years after the fact. Taken together, the totality of the evidence falls well short of establishing a "reasonable probability" that Jesse was wrongfully convicted.

##### **A. Analysis of Witness Accounts, Past and Present**

Reports of abuse given to police in 1987-88 were detailed, and many were procured early in the original investigation, long before any distorting influences materialized. In 2004, after the release of *Capturing the Friedmans*, several victims came forward to protest the film's coverage, to confirm that Jesse Friedman *had* victimized them, and to demand their privacy. Other victims, during the pendency of this re-investigation, contacted the Review Team to do the same. Though Jesse Friedman and the producers of *Capturing the Friedmans* claim to possess credible "recantation" testimony, the evidence available to the Review Team does not support this claim. Similarly, the Review Team is not able to credit a separate recantation statement offered by Jesse's counsel. On this record, the Review Team cannot conclude that Jesse Friedman was wrongfully convicted.

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*Practical Implications for Forensic Interviews and Courtroom Testimony*, 27 PACIFIC LAW JOURNAL 1, 27-29 (1996). Those researchers advise considering age only in the context of "a host of situational, developmental, and personality factors," all of which affect suggestibility. *Id.* at 29.

1. The Rapid Pace and Extensive Reach of the Initial Police Investigation Demonstrates Reliability

One reason to credit witness testimony is that, up to the second indictment, the investigation progressed rapidly enough to minimize the risk of any distorting influences. The very first witness interviewed by police described being touched by Arnold Friedman, and seeing Arnold show pornographic magazines to other children.<sup>433</sup> Police investigators—Detectives Doppman and Jones—took the first statement incriminating Jesse Friedman on November 23, 1987, just eleven days after the NCPD investigation against Arnold Friedman began, and while Jesse himself was away at college and not a subject of police suspicion. As of December 17, 1987, the investigation against Jesse Friedman lasted little more than a month, entailed police outreach to more than fifty households, and resulted in statements incriminating Jesse from *thirteen* children,<sup>434</sup> nine of which were taken during first interviews with children.<sup>435</sup> This evidence, obtained in the first weeks of the investigation, supported six counts of sodomy, thirteen counts of sexual abuse in the first degree, and twenty-four counts of endangering the welfare of a child. Conviction on these counts alone, separate from any charges contained in the third indictment, would support Jesse Friedman’s sentence, and his level three sex offender adjudication.

Given the breadth of the investigation, and the prompt manner in which evidence emerged, it is highly unlikely that the evidence against Jesse Friedman resulted from repeated, heavy-handed interviews. Similarly, the early investigation’s compressed timeline limits the chance that any factor would have distorted the investigation—such as conversations with classmates and parents, and unprofessional, suggestive therapy, even in one-on-one sessions. Two students provided incriminating statements against Jesse within two weeks of the start of the investigation against *Arnold* Friedman. Eleven more offered similar accounts against Jesse between November 25 and December 17 of 1987. In some cases—as on December 10—incriminating statements were taken simultaneously and by different detective teams, mitigating the chance of fabrication by a child or by a rogue detective. This compressed timeline differs markedly from popular impressions of the Friedman case.

Varied teams of detectives, some recruited from outside the Sex Crimes Squad, discovered evidence of similar criminal activity by Jesse Friedman. For example, Detectives Doppman and Jones took the first incriminating statement against Jesse on November 23, and Detective Merriweather and Officer Durkin the second, the very next

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<sup>433</sup> It is not true that the first thirty interviewees disclosed no wrongdoing by the Friedmans. *See supra* note 44.

<sup>434</sup> This figure includes one witness who ultimately recanted his account of physical abuse, and whose testimony led to only one charge unrelated to sexual acts, which was subsequently dismissed from the indictment. It also includes another witness whose statement was taken during this period, though the child did not testify to the contents of that statement until the third indictment.

<sup>435</sup> These nine statements appear, from the record, to result from first encounters. As described elsewhere, it is possible that police met with these witnesses earlier, but did not make any note of it.

day. (And notably, though she led the investigation, Detective Sergeant Galasso took *no* incriminating statements.) This timeline suggests that proof of the Friedmans' crimes lurked just below the surface, waiting for law enforcement to break a silence enforced by shame and threats.

## 2. Witness Statements Were Detailed

Though this Report cannot discuss witness statements and testimony in detail without revealing confidential witness information and violating grand jury secrecy, it is vital to note that victims' statements also disclosed abuse in great detail. The average length of a witness statement was five pages of 8½ by 11 inch paper, and some were much longer, reaching thirteen pages.

Some examples of witness statements are included below. To preserve confidentiality, these examples are selections from an unspecified number of statements and should not be attributed to any one individual.

- A child stated that Jesse Friedman used Vaseline to help put his penis in the child's "butt." Thereafter, the child's underwear became bloodied, and stuck to him "like glue."
- Several children remembered abuse occurring on a couch. One former student, unprompted, re-affirmed this very detail in an interview with the Review Team.
- One student said he would see children go into the hallway with Jesse Friedman. He would then hear children expressing cries of pain, like "ow," while they were there. Another child said he observed Arnold and Jesse remove a child from the class. He would then hear banging on the walls, and the child screaming for help.
- One child appeared to be holding back in an early interview with police. Though the child would not say that he was abused, he implied that there was something out of the ordinary about the class. He told his father, who was present at the interview, "Daddy, I *never* went to the bathroom." Eventually, in a later interview, he did tell police that he had been abused in the class. This child's suggestion that there was some special significance to the "bathroom" was corroborated by several other witnesses.
- A student remembered hearing Arnold Friedman call a child's mother to tell her that class was running late, even though it was not. Upon hearing that, the child said that he had wished for a gun so he could shoot the Friedmans, to stop them from hurting this other child. He wondered how someone Jewish could do that to another Jewish person.
- A student recalled that Jesse Friedman smiled every time he helped his father sodomize a child.
- Many children remembered magazines "with naked men."
- One child recalled being pulled into another room by Arnold Friedman, who then instructed him to take off his pants. The child described the

experience in detail, explaining how he struggled to unclasp his own green belt, which was always difficult for him to remove.

- Another child remembered that Jesse walked around with his penis exposed, because this child, and others, would say “XYZ” to each other, which meant, “examine your zipper.”
- In an interview with Detective Squeglia, another child described a computer program he had made to document the “bad” days in the class. He printed out his records—essentially, a record of abuse—and gave it to Detective Squeglia. Regrettably, neither the NCPD’s files, nor the District Attorney’s, currently contain such printout.

The level of detail found in these documents gives further reason to trust the victims in this case. It is highly unlikely that police could have “wrung”<sup>436</sup> compelling, specific testimony from so many victims over the course of the first six weeks of the investigation.

3. In the Wake of *Capturing the Friedmans* and Years Before Any Judicial or Media Attention, Victims Retained Counsel and Wrote Letters to Protect Their Rights, and to Reassert Jesse Friedman’s Guilt

Many of the victims from the original prosecution stand by their allegations of abuse. The release of *Capturing the Friedmans* triggered public debate about whether Jesse Friedman was, in fact, innocent all along, and for many complainants this was not a welcome conversation. Two former students—by then young men—sought counseling after the film’s existence led them to feel traumatized anew. Others sought to protect their legal rights: in 2004, four students who had testified against Jesse retained attorney Sal Marinello to assist them in protecting their privacy should the case again threaten to draw them back into the public spotlight. Marinello would not identify his clients to the Review Team, but verified that at the time of his representation, each of his clients had described to him events consistent with their prior statements to police and prosecutors. This is consistent with Marinello’s few public statements on the case: as he has said, his clients “were sexually abused during periods of time and they also indicated the son was involved.”<sup>437</sup> “They know what the truth is in this case. And when they see something as biased as this, it has to affect them.”<sup>438</sup>

Further, the *New York Times* reported that six of Jesse Friedman’s victims, and the mother of one, had publicly reaffirmed their testimony, saying “the film omitted or

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<sup>436</sup> *Friedman*, 618 F.3d at 158.

<sup>437</sup> *Jesse Friedman, Who Pleaded Guilty 25 Years Ago, Says He’s Innocent*, CBS NEW YORK, May 2, 2012, available at <http://newyork.cbslocal.com/2012/05/02/jesse-friedman-found-guilty-of-child-abuse-25-years-ago-says-hes-innocent/>.

<sup>438</sup> *CNN Live at Daybreak: Capturing the Friedmans: Case Reexamined* (CNN television broadcast Feb. 23, 2004), available at <http://transcripts.cnn.com/transcripts/0402/23/lad.01.html>.

distorted important information about their cases.”<sup>439</sup> Two victims also wrote a letter, published anonymously through Judge Abbey Boklan, who verified that they were indeed victims, imploring the Academy of Motion Picture Arts and Sciences not to recognize *Capturing the Friedmans* with an Academy Award.<sup>440</sup> The letter is reproduced in full:

*The Film Capturing the Friedmans about a case of child molestation in Great Neck, Long Island has been nominated for an Academy Award. We are two of the victims of Arnold and Jesse Friedman writing to you, asking you to hear our side of the story, writing on behalf of the other victims and ourselves. We were abused, tortured, and humiliated by Arnold and Jesse Friedman in computer classes in Arnold's basement. Many of us have physical scars from what was done to us; all of us have psychological scars. Although it has been 16 years, we live with the knowledge of these crimes every day of our lives. Some of us have had bad dreams, some of us slept with baseball bats under our bed for years for fear of reprisals. Many years ago, we thought we could not tell what was happening to us because we felt too guilty and embarrassed and were constantly threatened. Our parents thought Arnold was calling our houses so often because he was such a concerned teacher. His calls were to make sure we were not telling and to repeat the constant threats.*

*But we have worked through our suffering in therapy, and we are men now, no longer ashamed, some of us with families of our own, all of us embarking on a new life. And now one of the men who tortured and threatened us, Jesse Friedman, is being paraded like a celebrity while we have been left in the shadows, powerless, and voiceless once again.*

*Don't take our long journey towards healing away from us. Don't use our story to promote the agenda of a confessed child molester who destroyed our childhood and confessed numerous times.*

*We don't want the acclaim of this movie to keep other young boys who are being secretly abused silent for fear that their stories won't be believed. We don't want adults who might listen to the[ir] children [to] turn a deaf ear,*

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<sup>439</sup> Sharon Waxman, *Victims Say Film on Molesters Distorts Facts*, N.Y. TIMES, Feb. 24, 2004.

<sup>440</sup> See A597-99. As preserved, these statements are undated. However, each followed closely on the heels of a *Newsday* article dated January 10, 2004, requesting that Jesse Friedman's victims come forward.

*having seen the film and say, “These children are probably lying or exaggerating just like those Friedman victims in the movie.” We did not lie. We did not exaggerate. We were never hypnotized to tell our stories. The director twisted the facts in the film to make it appear that way. We told the truth then and are telling the truth now.*

*We don’t want the story of our suffering used to silence other victims of crimes. We want our own children to grow up in a world where it is safe for children to talk about abuse they are suffering and to get help quickly.*

*You are making a significant decision regarding which documentary film this year deserves the highest praise the film industry can offer. We are sure many factors go into your decision and don't know whether the feelings of the faceless subjects of this documentary are relevant to your considerations.*

*But we can tell you that if this film does win an Oscar, it will be won at the expense of silencing the plaintive voices of abused children once again, just as our own voices were silenced 16 years ago by the threats and intimidation of our tormentors, Arnold and Jesse Friedman.<sup>441</sup>*

*Signed,*

*24-year-old graduate student, abused by Jesse and Arnold Friedman*

*27-year-old businessman, abused by Jesse and Arnold Friedman*

Another victim, a law student at the time, wrote the following to Judge Boklan:

*I am writing to you because I need your help. I was a victim of sexual abuse as a young child. There were many other children who were also abused by the same perpetrators, Arnold and Jessie Friedman. Arnold Friedman died in jail, but Jessie Friedman is now attempting to appeal his conviction with the help of a wealthy filmmaker, the producer of the film Capturing the Friedmans. My concern is that during this appeal my privacy will be invaded. I am asking for you to help all of the victims who were involved in the criminal investigation of Arnold and Jessie*

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<sup>441</sup> *Id.*

*Friedman. We want to protect our privacy from further invasion and it is my position that the State should provide that help.*

*You may or may not be aware that a motion picture was made about this conviction, and that the director of the motion picture is planning to fund some type of appeal. I have recently become aware of the fact that this film has been nominated for an academy award. I am sure that the cinematography is excellent. I wish the director the best of luck in the pursuit of his award, however, I find his position as a financial supporter and advocate for Jessie Friedman's appeal questionable at best. It seems obvious that ancillary to this appeal is an opportunity for him to advertise himself for the purpose of furthering his professional career. He is biased due to the substantial stake that he has in the outcome of the appeal. The culmination of his life's work is his movie that is now aligned with the legal status of Jessie Friedman. A victory in the courtroom would validate his film as a so called "important work" that carries with it the force to impose its will upon our criminal justice system. What aspiring director would not desire such recognition as a social force to project his or her career into the stratosphere of the film-making industry? This director's cause is wrong and his purpose is self serving at my expense as well as at the expense of the other victims.*

*Arnold and Jessie Friedman violated my trust for them as educators by sexually abusing my classmates and I at their home where they purported to teach computer skills to young people. As a child I was often placed by my parents into the custody of others whether be it at school, or at an after school care program or at a summer camp. This seemed quite common among my peers and I was comfortable with trusting adults as authority figures.*

*Arnold and Jessie Friedman portrayed themselves as educators who would teach young children how to operate a computer. Many parents were quite enamored with the idea that their child should be equipped with the advantage of computer literacy as the computer technology boom began in the mid 1980s. It was under the guise of an educator, that Arnold and Jessie Friedman used computer technology to show young children pornography, to take photographs of young children reacting to that pornography, and to take photographs of sexual acts being*

*performed by young children. I was [REDACTED] years old when I was in the custody of Arnold and Jessie Friedman. At that time I did not understand the dynamics of human sexuality, I only understood fear. I became afraid of everything beyond my control. My childhood curiosity was replaced with an inherent distrust for adults, authority figures, and every unknown.*

*As a victim of sexual abuse perpetrated by Arnold and Jessie Friedman, I should not be obligated to bear any burden, for the purpose of justifying their conviction ex-post. The criminal justice system is an apparatus that society uses to enforce the standards of conduct necessary to protect individuals and the community. It operates by apprehending, prosecuting, convicting, and sentencing those members of the community who violate the basic rules of group existence. The action taken against lawbreakers is designed to serve three purposes beyond the immediate punitive purpose: 1) as a deterrent, 2) to remove dangerous people from the community, and 3) it gives society an opportunity to attempt to transform lawbreakers into law-abiding citizens. This system is imperfect. It is based in theories of retribution and punishment. Furthermore, the victims are entitled to closure, with no obligation lasting in perpetuity to certify, in whole or in part, the prosecution of the criminal defendant by the State ex-post.*

*I am now a [REDACTED] year-old law student who has confronted my past. It seems absurd to me at this point that I may be subpoenaed by a court once again to authenticate my testimony that I gave to a grand jury as a [REDACTED] year-old child. It is my position that the State should protect me and all the other victims from having our privacy further invaded. As a victim of sexual abuse, I can tell you first hand how embarrassing it feels, despite having done nothing wrong. The sexual abuse was bad enough, but the process of being a part of an investigation and testifying before a grand jury was also very painful. It would be unjust for the State to abandon us now when our privacy may be threatened once again by Jessie Friedman, a convicted sex offender, and his ally, the director of the film Capturing the Friedmans.*

*We need help to prevent our further exposure. Arnold and Jessie Friedman were found guilty of sexually abusing children. The Court determined there was no reasonable*



*doubt that those defendants had committed those crimes. The victims bore our burden by participating in the investigation and testifying. I, nor any of the other victims, should now be placed in a position to defend the conviction of Arnold and Jessie Friedman ex-post. If there is anything that you can do to help us I would be eternally grateful.*<sup>442</sup>

*Sincerely,*

*John Doe*

At least one student who retained Sal Marinello to protect his identity signed one of these anonymous letters. Depending on how much overlap actually occurred, these letters and the confidential statements given to Marinello therefore represent between four and six additional, recent, and independent confirmations of Jesse Friedman's criminal conduct.

4. In Recent Interviews, Victims Confirmed Abuse at the Hands of Arnold and Jesse Friedman

Several additional witnesses have come forward during the re-investigation to reaffirm the abuse they suffered at the hands of Arnold and Jesse Friedman. Their recent statements are summarized below.

a. *Witness 13: Complainant, Major Witness*

In the original prosecution, statements by Witness 13 formed the predicate for several charges, including sodomy. At the time, Witness 13 described in detail how Jesse Friedman would wrap his leg around Witness 13's leg to keep him off balance, or restrain him during sexual acts. Over the course of several recent interviews, Witness 13 emotionally and angrily recounted his experiences in the Friedman class to the Review Team, experiences that, he claimed, deprived him of his childhood.

He explained that his experiences with Arnold and Jesse Friedman were initially positive. However, Witness 13 recalled a point where this changed completely. Specifically, one day, Jesse pulled him into a "room with a folding door," struck, insulted, and then forcibly anally sodomized him. From there, the Friedmans' abuse progressed rapidly, with Jesse always playing the role of enforcer. Jesse appeared to take sadistic delight in this part, and in forcing Witness 13 to submit to Arnold Friedman. According to Witness 13, Arnold's advances seemed almost reluctant, as if he were surrendering to a desire he hated, but felt powerless to resist.

Witness 13 suffered both mentally and physically from this abuse. He described, for example, suffering from severe stomach pain, a symptom corroborated by those who knew him at the time, as described below. He claimed that, during a colonoscopy

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<sup>442</sup> *Id.*

conducted more than ten years after the events of this case, the gastroenterologist noticed and commented on damage that would have been consistent with sexual abuse. No medical evidence exists to substantiate this memory. Though Witness 13 did undergo a colonoscopy as a result of continuing stomach problems, the results of the colonoscopy showed no irregularity. Nor did the gastroenterologist remember seeing any such damage, after reviewing his records.

Additionally, Witness 13 was diagnosed with a psychiatric condition, which his treating psychiatrist ascribes to the abuse he suffered at the Friedmans' hands. With Witness 13's permission, the Review Team spoke extensively with his treating psychiatrist. His psychiatrist had been a family friend, and had a professional (non-treatment) relationship with Witness 13's father. Witness 13's father would visit the doctor to work with him once a month, and Witness 13 would join and play in the waiting area. Witness 13's psychiatrist witnessed firsthand his change from a normal but quiet five-year-old into a "drifty," troubled seven- to nine-year-old child. The psychiatrist also recalled that Witness 13 began to suffer from spontaneous diarrhea in the years during the Friedmans' class, and that he would frequently run to the bathroom at odd intervals and complain of severe stomach pain.

This psychiatrist began treating Witness 13 approximately eight years ago, and recalled in retrospect that Witness 13 began to display symptoms of his psychiatric condition at a young age, possibly during or after his experience in the Friedman class. Based on his memories of Witness 13's behavior at the time, and his current medical analysis, he does not doubt that Witness 13 was abused by Arnold and Jesse Friedman. Today Witness 13 is married and employed, and his condition is improving, though it tends to worsen when the subject of the Friedmans is broached.

*b. Witness 11: Complainant, Victim of "Sex Games"*

As a child, Witness 11 implicated both Friedmans and others in sexual criminal acts, including sodomy. He became one of the complainants who described "sex games" forced on the children by Arnold and Jesse Friedman.

Witness 11 declined to answer an initial letter sent to him by the Review Team. After learning that the filmmaker behind *Capturing the Friedmans* was claiming that leading witnesses had "recanted," a second letter was sent to all complainants, including Witness 11. This letter included news reports discussing these alleged recantations. This time, Witness 11 responded to the Review Team's letter by calling and agreeing to meet with the team.

In that meeting, Witness 11 was invited to tell his story, uninterrupted by questions. He opened by saying, without any prompting whatsoever, that police were "aggressive," but "never told [him] what to say." When police visited him, he said, he was terrified: Jesse had promised to "kill his dog" if he reported either of the Friedmans to the police. Also, Witness 11 was aware that Jesse attended the alternative Village School, which also terrified him, because he perceived that students at that school were outside the mainstream. Police came several times, he said, and he initially told them that

nothing had happened, because “I would have been happy never to have said anything.” But it was clear that the police would keep coming. In the last visit, a female detective warned that he would never enjoy a “normal” relationship with a woman if he covered for the Friedmans. This “resonated” with him, and “the floodgates opened.” He asked the female detective to leave, and began to tell the male detective what had happened to him.

The result was a seven-page statement implicating the Friedmans and others. By his own detailed recollection, police said he told them things they had not heard before. Although the Review Team did not share the contents of Witness 11’s original statement with him during his interview, Witness 11 was able to recall specific instances of abuse described similarly in his statement from almost twenty-five years earlier. He took the class for several years, and was abused more by Arnold than Jesse in the early years, he said. Arnold would sit next to him, put his hand on his leg, and rub it. From there, activity escalated, and Witness 11 felt that he was being “groomed.” He was eventually placed in the advanced student class, where sexual abuse escalated even further. “It happened a lot,” he told the Review Team.

On one occasion, he came home and hid his clothes because there was “stuff on it” from the sexual abuse. Beyond this, he remembered playing a penis measuring “game,” which Arnold and Jesse either joined or observed, and “Leap Frog.” He told the Review Team that he had “blocked” much of that experience, but that he knew the “game” was sexual, and he remembered being sodomized as well. Sexual abuse, he said, often happened off to the side of the class—though, according to him, all students were aware of what was happening—and “a lot happened on the couch.”

As a teenager, he felt humiliated by his association with the case. Everyone in his high school knew that he had been molested, he said. In college, he dealt with the stress and shame of it by “self-medicating” with drugs. When asked about therapy, he said that he may have seen a therapist once or twice after he disclosed his abuse, but that these were individual sessions, not group therapy. He was never hypnotized, he said.

Witness 11 described becoming very depressed and going into therapy for about two years following the release of *Capturing the Friedmans* (even though he said he did not see the film). Today, Witness 11 still bears the scars of his experience. Even now, he often finds it difficult to complete complex tasks, a problem his therapist attributes to the fact that Arnold and Jesse would interrupt computer lessons with molestation. Witness 11 has shared his experiences with his wife, and explained that his history has affected how he cares for his own children. It took him years before he would trust a non-family member with his children’s care. When asked why he came forward now, Witness 11 explained that, when he learned of the alleged recantation testimony, he felt he had to come forward, because he “[doesn’t] want Jesse to win.” Witness 11 only remembered being abused by the Friedmans, not by an additional individual he had specifically named as an abuser in 1988.

c. *Witness 2: Complainant, Appearing in Capturing the Friedmans*

This report discusses Witness 2 above,<sup>443</sup> and concludes that he was never hypnotized. Apart from this, Witness 2 contacted the District Attorney's office to reaffirm the abuse he suffered at the hands of Arnold and Jesse Friedman.

He recalled being made to drink orange juice containing semen, and being given chewing gum mixed with the same. He believed this "game" might have had some relationship to a reward that Arnold Friedman won, and took place at a 3:30 PM make-up session before a 4:00 PM class. As evidence of the abuse he suffered, he also repeated that he continued to suffer from a rectal tear, the result of sodomy, though neither he nor his mother could remember the name of the doctor who diagnosed the condition. (This is not a new claim: Witness 2 reported the same condition to Andrew Jarecki during his interview for *Capturing the Friedmans*.) As to the original investigation, he acknowledged that police were aggressive, but stressed that they did not tell him what to say. It is notable that, today, Witness 2 describes a course of abuse far more pervasive than that detailed in his original witness statements. In 1987-88, Witness 2 never shared with police that he had been made to participate in "sex games," chew gum, or drink juice. This may be a result of delayed disclosure, or of group therapy, which Witness 2 participated in after the close of the case.

Witness 2 said that he deeply regretted participating in the film. He said that when he later saw how Jarecki distorted his interview, it "made [him] nauseous." For example, Witness 2 said, Jarecki convinced him to recline during the interview. The pose was not his idea, Witness 2 told the Review Team.

d. *Witness 18: Non-Testifying Victim and Early Interviewee*

Another former student described being abused, but did not participate in the original prosecution. Police notes show that he described being fondled by Arnold Friedman and being taken to an adjoining room where Arnold showed him a pornographic magazine. After that interview, his parents removed him from the case, and he never spoke with police again, nor did he speak with a therapist, or other professional, until adulthood. At the beginning of this investigation, the Review Team sent Witness 18 a letter requesting an interview. Upon receiving the letter, he said, he felt "re-victimized," to the point that he almost collapsed.

In a recent interview with the Review Team, Witness 18 remembered much more than what was contained in the original files. He believed, for example, that notes of his original interview would show that he had also implicated Jesse as an abuser. The notes do not mention Jesse Friedman as an abuser, though the detective who recorded the notes also told the Review Team that the detective believed Witness 18 *had* implicated Jesse in the course of the interview. However, Witness 18 did remember deliberately holding

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<sup>443</sup> See Section III.B.2, *supra*.

back and not telling the police everything he knew, because, he said, the Friedmans had threatened to kill his parents if he told the police. In that interview, he said, the police asked only a few questions, all of which were open-ended.

He specifically remembered that Arnold Friedman showed him a book with Egyptian pyramids on the cover. The book also contained pictures of naked men and, later in the book, more and more naked people appeared. Arnold read the book to him, he said, as he sat on Arnold's lap in Arnold's office and waited for his parents to pick him up from the class. His parents were often late. Twenty-five years later, Witness 18 still remembered specific details about Arnold's office: the color of the desk, the placement of bookcases, and the window. From that vantage point, Arnold could see the front of the house, and any approaching car.

Witness 18 also said that he had not been sodomized by the Friedmans, but that both Arnold and Jesse had touched him on his legs and his buttocks—a behavior typical of early grooming<sup>444</sup>—and that Arnold and Jesse both put their hands down his pants to fondle his penis. Notably, Witness 18 also remembered playing “Leap Frog,” alone with Jesse Friedman and with other students, but did not remember the game being sexual. As a child, too, he remembered seeing a leaflet for Elaine Friedman's childcare service. He tore it down, because he did not want other children to experience what he had experienced at the Friedman household. Witness 18 believed he passed the leaflet on to the police at the time. A leaflet fitting that description does, in fact, exist in the District Attorney's files, but is not linked to any one witness.<sup>445</sup>

Witness 18 also clearly remembered the violent, vivid threats Jesse Friedman used to induce his silence. For example, the Friedmans threatened that, if Witness 18 spoke to the police, the Friedmans would slaughter his family in the middle of the night and leave only him alive. Because of this experience, he was terrified when police came to his house. And years later, even in college, Witness 18 was afraid to sleep alone and would imagine Arnold's and Jesse's faces in open windows. He first entered therapy when he was twenty-seven, still trying to cope with the effects of abuse he suffered at the Friedmans' hands. Witness 18 said that, mere minutes into his first therapy session, before he had an opportunity to discuss his past, the therapist recognized his symptoms and asked, “when were you abused?” Although he never saw *Capturing the Friedmans*, Witness 18 sought the help of a second therapist, a post-traumatic stress specialist, in 2004, shortly after the film's 2003 release. During those therapy sessions, he discussed Jesse Friedman as another abuser. Notably, though Witness 18 did not seek therapy until

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<sup>444</sup> For a well-known example of similar behavior, see, e.g., Malcolm Gladwell, *In Plain View*, THE NEW YORKER, Sept. 24, 2012. There, Gladwell breaks down the behavior of former coach Jerry Sandusky, and outlines the key steps of the pedophile's tradecraft, beginning with ingratiating oneself into a community, and progressing to subtle touches and play. *Id.*; see also Marc Fisher, *The Master*, THE NEW YORKER, Apr. 1, 2013 (“According to the studies, abusers are disproportionately teachers who have won awards for excellence; they groom their targets, often selecting students who are estranged from their parents and unsure of themselves, then inviting them to get extra help in private sessions.”).

<sup>445</sup> See A411, advertisement for “Childbuilders,” naming Elaine Friedman.

he was a young adult, and was entirely removed from the original prosecution, his present-day recollections align with both his initial statement, and other witness accounts, to which he was never privy.

With Witness 18's permission, the Review Team met with his post-traumatic stress specialist, who confirmed that Witness 18 often discussed Jesse Friedman as an abuser, and as the source of his anxiety. This began when, one day shortly after the release of *Capturing the Friedmans*, he expressed his anger that anyone would try to rehabilitate the Friedmans. Then he spoke to her in detail about being abused by both Arnold and Jesse Friedman. Based on her experience with other victims, the therapist found his accounts credible, and contrasted him with others who make things up in therapy.

In a separate interview, Witness 18's mother said that her son never told her his full story until after the release of *Capturing the Friedmans*. In retrospect, a number of details stand out to her: she said that after attending the Friedmans' class, for example, her ten-year-old son began to defecate while clothed, a reaction that she now believes may have been brought on by his fear of the Friedmans. She further recalled being contacted by Jesse Friedman, who would call to invite her son to come over and borrow videogames from the class library and participate in extra "play time," or to question why her son did not sign up for another class. And, after his involvement with the Friedmans, Witness 18 did not want to stay home alone in the house at night, even while in college.

## 5. Analysis of Alleged "Recantation" Testimony

In recent months, the filmmakers responsible for *Capturing the Friedmans* have claimed to have spoken with "ten" original complainants, none of whom, the filmmakers say, stand by accusations they made in 1987 and 1988.<sup>446</sup> Of these ten, Jarecki and Smerling claim that four have outright recanted their accusations, one "had no recollection prior to [hypnosis] therapy," and the remaining five "refused or were unable to substantiate accusations."<sup>447</sup> Media outlets have reported these conclusions,<sup>448</sup> and both Jarecki and Smerling have presented them in numerous public meetings, in the form of a PowerPoint presentation or "evidence reel" containing snippets of interviews, brief analysis, and conclusions.

Despite a representation they made to an interviewee on at least one occasion, these interviews were conducted by the filmmakers acting alone, and not in cooperation with the District Attorney's office. And contrary to his public statements, the filmmaker

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<sup>446</sup> See, e.g., Ann Givens, *Revisiting the Friedmans*, *NEWSDAY*, July 3, 2012.

<sup>447</sup> These quotes derive from a slide of an October 2012 draft of an "evidence reel" PowerPoint presentation provided to the District Attorney's office by Andrew Jarecki on January 15, 2013.

<sup>448</sup> See Daniel D'Addario, *Uncapturing a Friedman*, *SALON*, Mar. 13, 2013, [http://www.salon.com/2013/03/13/uncapturing\\_a\\_friedman/singleton/](http://www.salon.com/2013/03/13/uncapturing_a_friedman/singleton/).

has not shared *all* notes and transcripts from these interviews.<sup>449</sup> Furthermore, there is no record of how many times interview subjects were spoken with, or what they were told prior to their interview. Some subjects were never told that their interviews with the filmmakers were being recorded. In any event, for the reasons discussed below, the Review Team does not believe that these claimed “recantations,” obtained so many years later and without any of the indications of reliability that normally attend such statements,<sup>450</sup> provide a basis for upsetting Jesse Friedman’s conviction.

a. “Five refused or were unable to substantiate accusations”

First, the filmmakers’ reference to five students who did not substantiate their accounts is vague and misleading. By this description, the filmmakers may be saying only that these five students refused to speak with them. No substantive conclusions can be reasonably drawn from this refusal, except that the subjects did not wish to speak with the filmmakers. Such responses can hardly be seen as exculpatory.

The investigative team has also had the opportunity to review three letters sent by filmmaker Marc Smerling to victims. Smerling implied that he was in possession of new evidence showing that the police and therapists used improper techniques to elicit accusations against the Friedmans. It is understandable why a victim would not wish to respond to the filmmaker responsible for *Capturing the Friedmans*, and who is now plainly looking for information tending to exculpate Jesse Friedman.

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<sup>449</sup> See Nick Pinto, *Jesse Friedman Spent 13 Years in Prison as a Notorious Child Rapist—He May Soon Get an Apology*, VILLAGE VOICE, May 29, 2013, available at <http://www.villagevoice.com/2013-05-29/news/jesse-friedman/>. In at least one article, Jarecki has vastly overstated the amount of assistance he did provide the Review Team. See Andrew Jarecki, *Exonerating the Friedmans*, HUFFINGTON POST, Apr. 26, 2013, [http://www.huffingtonpost.com/andrew-jarecki/capturing-the-friedmans\\_b\\_3165120.html](http://www.huffingtonpost.com/andrew-jarecki/capturing-the-friedmans_b_3165120.html) (“We have provided the DA with over 1,700 pages of materials including full transcripts of dozens of interviews with key witnesses whose testimony was otherwise unavailable.”). By the Review Team’s calculations, and excluding duplicates, Jarecki supplied only 1,164 unique pages. But even that number includes hundreds of pages of documents that the Review Team clearly already had access to: the original indictments, transcribed interviews and affidavits from prior litigation involving the District Attorney’s office, the Second Circuit’s opinion on the case, and relevant news articles. Subtracting these, Jarecki gave the Review Team less than 600 unique pages, *including* his 132 “page” PowerPoint presentation. In addition to this number, Jarecki did assist Arline Epstein in preparing the 181 pages of documents that she eventually shared with the Review Team.

<sup>450</sup> New York courts regard recantation testimony with skepticism. *People v. Shilitano*, 218 N.Y. 161, 170 (1916). However, though it is “considered to be the most unreliable form of evidence,” courts will credit recantation testimony based on an analysis weighing “(1) the inherent believability of the substance of the recanting testimony; (2) the [recanting] witness’s demeanor both at trial and at the evidentiary hearing; (3) the existence of evidence corroborating the trial testimony; (4) the reasons offered for both the trial testimony and the recantation; (5) the importance of facts established at trial as reaffirmed in the recantation; and (6) the relationship between the witness and defendant as related to a motive to lie.” *People v. Jenkins*, 84 A.D.3d 1403, 1407 (2d Dept. 2011).

b. *“One had no recollection prior to therapy”*

The claim that one complainant, Witness 2, was hypnotized prior to disclosing abuse is analyzed and refuted above in Section III.B.2, on page 78. The filmmakers ignore a sworn statement, prepared for court, from Witness 2’s treating therapist, stating that no such hypnosis occurred. They also ignore other portions of their own interview with Witness 2, in which the witness claimed to have disclosed abuse even *before* entering therapy. The decision to ignore these facts, and to reference only those parts of Witness 2’s statements that suggest he was hypnotized, resulted in a misrepresentation of Witness 2’s information.

c. *“Four [complainants] recanted”*

The filmmakers’ efforts led them to one witness who unequivocally told them that nothing happened to him. However, that witness did not say the same thing when speaking with the Review Team, and he made clear that he actually believes that Jesse Friedman *is* guilty. Analysis of the transcripts of interviews with the remaining three “recanters” makes clear that the filmmakers’ representations of them are misleading.

- **Witness 3 (“It’s a little disturbing that I’m one of the primary complainants.”):** Andrew Jarecki’s “new evidence” reel shows Witness 3 explaining that he “never testified” that he had been “abused,” in the sense of subjected to “gross” “pedophile activities.” In the transcript given to the Review Team, which appears to begin mid-interview, Witness 3 expressed grave concern, saying that he does not wish to speak to the interviewer, and asked how he was found, and why the records were not sealed. He emphasized that he did not want to be known to be associated with the case. He told the interviewer he did not remember what happened in class, mostly because it was so long ago, and partly because he did not want to remember.

But, Witness 3 confirmed that he “felt uncomfortable” in the Friedmans’ class, and that he saw “activity that took place in that computer room that seemed abnormal.” Specifically, he remembered several “software programs that were pornographic” and that the Friedmans were “perform[ing] stuff” while “sexually aroused” near the children in the classroom. He also stated his belief that the Friedmans were guilty, saying, “Did they go to prison for the right reason? Yes.” After learning of Witness 3’s interview, the Review Team sought once more to speak with him. He declined, but expressed anger upon learning that the filmmaker had recorded him and shared his statements.

This description of Witness 3’s involvement is consistent with his original statements to police: he was *not*, in fact, “one of the primary complainants,” and he never claimed to police that he was sodomized. He did not deny that Jesse and Arnold endangered the welfare of the children in the classroom by engaging in inappropriate sexual conduct, and showing them sexual videogames. In fact, he confirmed it, saying that the Friedmans “performed stuff” while “aroused” in close proximity to the children.



On April 18, 2013, Jarecki sent the Review Team a letter in which he described conducting a subsequent, in-person interview with Witness 3. He declined to include a transcript of the interview, or the full, unedited recording of it. During the interview, Jarecki said, he informed Witness 3 that his grand jury testimony had produced twenty sexual abuse charges. Witness 3 was surprised, and believed that the only way that so many charges could have resulted was if the prosecution had taken affirmative answers to innocuous questions and translated those to allegations of sexual abuse. From this, Jarecki concluded, mistakenly, that Witness 3 was asked only “yes or no” questions in the grand jury and that he “never had to independently recall or recite the specifics of crimes.”

All of these claims are untrue. Witness 3’s testimony led to, against both Friedmans, two sexual abuse charges (for Jesse pressing his penis against his back) and eighteen counts of Endangering the Welfare of a Child. These charges are largely consistent with Witness 3’s current claim that he was not a primary complainant, but rather, that he only *observed* sexual acts, and pornographic material in class. Further, in the brief portion of Witness 3’s interview that the Review Team was able to see, Witness 3’s statements were all qualified, couched in uncertainty, and peppered with terms such as, “I think” and “probably.” Witness 3 spoke about what “may have” happened or been said, not what did.

- **Witness 15 (“What I do remember is the detectives putting on a lot of pressure to speak up.”):** Submissions made to the Review Team in support of Jesse’s innocence by Ron Kuby and attorneys associated with the filmmakers quote a third complainant describing his meeting with police investigators:<sup>451</sup>

*What I do remember is the detectives putting on me a lot of pressure to speak up. Yeah?... And.. And.. And at some point I, kind of broke down, I started crying, yeah? And when I had... and when I started to tell them things, I was telling myself that its [sic] not true. Like I was telling myself, [“]Just say this to them in order to get them off your back.[”]*

Though the statement’s context is not discussed,<sup>452</sup> the reader is left with the impression that this complainant falsely implicated Arnold and Jesse Friedman to end an emotionally charged and aggressive interview. Reviewing the interview, however, Witness 15’s account describes nothing of the sort. A few lines later, Witness 15 says, “they’re putting so much pressure on me that basically I just spoke up. But from the other side, the things that I was saying [were] accurate.”

Furthermore, he describes speaking out *despite* the fact that this abuse was something that he blocked out of his mind. Like many young boys, Witness 15 felt that any discussion of sex, especially of sexual experiences related to

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<sup>451</sup> Friedman submission, at 25.

<sup>452</sup> *Id.*

homosexuality, was “unbelievably uncomfortable.” “It’s not simply that you were abused,” he says, “but you’re sexually abused. And sex is a very touchy subject for everyone, even adults.” Especially because the abuse he experienced touched on “homosexuality,” he said, “it becomes a very sensitive subject. And all you want to do is tell yourself, ‘it didn’t really happen to me.’”

Witness 15 went on to reaffirm rather than recant his account of abuse at the hands of Arnold and Jesse Friedman: “[t]he confessions that I made in court were as accurate, as accurate as I could state them,” he said. “I was one of those [abused] kids,” Witness 15 said. Though he could not remember all the details of the abuse, he attributed his foggy memory to psychological distance, not fabrication: “a reason that I don’t remember clearly is simply because I don’t want to remember it clearly, you know?” He did, though, remember some details: he said that he believed there was a bathroom near the classroom, and that “kids would go back there with Arnold and Jesse for some reason.”

He even described the results of this abuse, saying, “my grades dropped in school” as a result. He also acknowledged that he “remember[ed] maybe a few instances of [the Friedmans] standing there naked, or seeing them naked,” and further stated that police “never told [him] what [he was] supposed to be saying,” or asked any specific, leading questions:

*[W]hat I do remember is under no circumstances did the police ever tell me, ask me something specific. Understand. They never told me what I’m supposed to be saying, so to speak.*

The police tried to make the experience “less traumatic,” he said, and they did not repeatedly visit his home. They came back, he said, “but they definitely didn’t continue coming back.” Far from a recantation, Witness 15 provides much support for the prosecution’s original case.

- **Witness 1:** The only count derived from Witness 1’s testimony was non-sexual and dismissed by Judge Boklan.<sup>453</sup> Therefore, as a “recanting witness,” Witness 1 adds very little to the argument that the final indictments against Arnold and Jesse Friedman were flawed.

When speaking recently with the Review Team, Witness 1 advised that he regretted his interview with the filmmaker, which he believed had been unfairly distorted in *Capturing the Friedmans*. Witness 1 stated that he could not say for certain, and had not said to the filmmaker, that he believed Jesse Friedman was entirely innocent. His position—as expressed in a four-page affidavit he signed in support of Jesse’s habeas petition—was only that police questioning was highly suggestive, and that, if sexual abuse occurred, he had not witnessed it.<sup>454</sup>

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<sup>453</sup> See note 78, *supra*.

<sup>454</sup> See [REDACTED] Aff. ¶¶ 5, 12-13.

However, he recalled to the Review Team that students did not want to go to the bathroom at the Friedman house, for reasons he could not remember, and shared a vague recollection of being asked by a fellow classmate a question along the lines of, “did you get to go into Jesse’s room?” He is not sure today whether this memory is false and a product of what he later heard about the case, but if true, this memory would be suggestive of some irregularity in the Friedman class.

Additionally, in speaking with the filmmaker, Witness 1 said that police were not very forceful, and interviewed him only for a couple “seconds” at a time. He also told the filmmaker that another adult would “always come around” the classroom, and spend his time “sitting on the couch and hanging out with Jesse . . . [l]aughing.” When asked if that person was Ross Goldstein, he said yes, he believed so. During the same interview, he said that he remembered being upset because other students were allowed to use the bathroom, but Witness 1 was not. His father, too, confirmed that Witness 1 had related this to him as a child. The significance of the bathroom, as a location where abuse occurred, was discussed by many complainants, and alluded to in Witness 15’s own interview with the filmmaker.

- **Witness 14 (“As God is my witness, and on my two children’s lives, I was never raped or sodomized.”):** In an edited interview done by the filmmakers, Witness 14 specifically disclaimed acts he once described to police in sworn statements. But, in light of the entire interview, and the witness’s subsequent statements to the Review Team, the “recantation” is not credible. For instance, though Witness 14 told the filmmakers that he did not recall being abused by the Friedmans, he went on to state unequivocally that others were abused—“stuff really did happen,” he said, and added that pornography was present in the classroom. And Witness 14 also balked at participating in an attempt to exonerate Jesse Friedman: “I’m certainly not, not going to sit there and let Jesse Friedman off the hook for what . . . he did to people that I know about.”

After speaking first with the filmmakers, Witness 14 also responded to a letter from the Review Team and, though he declined to meet with the Review Team in person, he agreed to speak over the phone. At the time, the Review Team was not aware of what Witness 14 had told the filmmakers, and the Review Team was therefore not able to question Witness 14 specifically about his statement.

In his telephone interview with the Review Team, Witness 14 stated that he had no recollection of Arnold Friedman’s class, positive or negative. Yet, he reacted physically when reminded of his prior statements: “my heart is pounding,” he said. Witness 14 stated that he does not remember abuse and that, therefore, it probably did not happen. However, when asked whether he remembered being questioned by A.D.A. Joseph Onorato (an event that unquestionably occurred), Witness 14 could not remember that either. Therefore, though he said he has no specific memory of being abused, he was also “not saying it didn’t happen.” He was also careful to guard his privacy. He explained that he had not told his wife or his children anything about his involvement in the 1987 case, and that he was

upset to learn that his previous conversation with Andrew Jarecki had been covertly recorded.

In late April, 2013, Witness 14 was informed that Jesse's attorney, Ron Kuby, was seeking a court order requiring disclosure of witness statements to police, and grand jury testimony. In response, Witness 14 hired counsel, and informed the Review Team that he felt "tricked" by Andrew Jarecki, and that he stood by the statement he made to the Review Team.

Lastly, the Review Team also discovered a letter from Witness 14's father, addressed to the police commissioner, in which the father commended the police department for their professional treatment of his son throughout the prosecution:

*They took the time and expended the energy necessary not to scar our young son's mind. . . . [Detective Sergeant Galasso's] skills as a detective are only surpassed by her skills as a human being. She helped to retrieve [sic] my son's dignity from the gutter and return his self-respect. What more could a parent want?*<sup>455</sup>

It is difficult to conclude, in light of this letter, that Witness 14's statements to police were not truthful.

In sum, the only true recantation to stem from the filmmakers' independent research—Witness 14—is now subject to substantial doubt. When Witness 14 realized that the consequences of his statement could lead to Jesse Friedman's exoneration, he balked and refused to cooperate in that endeavor. Given the length and detail of Witness 14's previous, ten-page sworn statement, his father's assessment of the way police treated his son, and a complete reading of his interview transcript, it is difficult to credit this as a reliable recantation.

*d. Recantation Statement: Witness 10*

Near the end of the re-investigation process, Jesse's counsel Ron Kuby contacted the Review Team and Advisory Panel to inform both that another individual, Witness 10, had come forward to recant his prior accusations against Jesse Friedman.<sup>456</sup> Prior to this date, the Review Team had contacted Witness 10 twice, each time by registered letter to his home address, with no result.

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<sup>455</sup> A508-09, letter from father of Witness 14 to Commissioner Samuel J. Rozzi, NCPD (Mar. 30, 1988), (praising, too, Detective Merriweather and Officer Durkin).

<sup>456</sup> See letter from Ronald L. Kuby to Madeline Singas, Chief A.D.A., NCDA (May 24, 2013), at 1 ("[Witness 10] has not spoken to anyone affiliated with Mr. Friedman's defense prior to supplying this letter."). This letter arose in the context of parallel, civil litigation, in which Jesse Friedman is seeking full disclosure of all witness statements and grand jury testimony related to his original prosecution. The District Attorney has opposed this application.

In a three-page statement attached to Kuby's own letter, Witness 10 advised the Review Team and Advisory Panel that, having reviewed "all of the accusations allegedly made" by him, "none of the events allegedly described by or attributed to" him in the original prosecution "ever took place." He specifically disavowed his allegations against Jesse Friedman, which, in the first indictment, sustained two counts of Sexual Abuse in the First Degree and two counts of Endangering the Welfare of a Child. "During the time that I was present in the computer classes," he writes, "I did not observe Arnold or Jesse Friedman engage in anything even remotely akin to sexual conduct."<sup>457</sup>

Witness 10 blames police for inducing him to lie during his interview: "police investigators came to my home repeatedly," and "repeatedly told me that they knew something had happened, and they would not leave until I told them," such that, "[a]s a result, *I guess* I just folded so they would leave me alone."<sup>458</sup> Having made these statements, Witness 10 further advised that "I do not wish to be contacted by you, or anyone else related to this case, except to the limited extent that you need to confirm my identity."<sup>459</sup>

Witness 10 was the first victim to report being sodomized by Arnold Friedman. He was also the first witness to allege any sexual abuse against Jesse Friedman. And, according to files available to the Review Team, Witness 10 was visited by police only once: on November 23, 1987, the day he signed his first and only witness statement.

This statement was given very early in the investigation, a fact that cuts sharply against Witness 10's claim that he was visited "repeatedly" by police. Indeed, it would have been unlikely for a witness to have been visited "repeatedly"—as in, more than once—just eleven days after the investigation began. Over the course of that eleven days, a team of a dozen investigators conducted thirty-five distinct interviews, leaving little time for repeat visits. The Review Team found proof of only three documented *second* visits, and no documented *third* visits, prior to November 30, 1987.

Though Witness 10 claims that undocumented, repeat interviews caused him to falsely accuse the Friedmans, he offers no facts to support the conclusion. Indeed, the witness offers only the equivocal, conclusory statement that tales of police wrongdoing "rang true," and that, as a result, "I guess I just folded so they would leave me alone."<sup>460</sup> Witness 10 is certainly not obligated to provide any more information. But, the Review Team cannot ascertain the reliability and importance of Witness 10's statement without first meeting with and interviewing him. Witness 10 clearly stated that no such interview would take place, and though the Review Team reached out to Witness 10 to discuss the substance of his statements, these efforts were met with silence from Witness 10. Indeed,

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<sup>457</sup> A829. This is the letter referenced in the *New York Times*' June 16 article on the re-investigation. See Peter Applebome, *Reinvestigating the Friedmans*, N.Y. TIMES, Jun. 16, 2013, available at <http://www.nytimes.com/2013/06/16/nyregion/reinvestigating-the-friedmans.html>.

<sup>458</sup> A829-30 (emphasis added).

<sup>459</sup> A830-31.

<sup>460</sup> A829-30.

though Witness 10 offered in his letter to confirm his identity by email, Witness 10 ignored an email sent to that address.

Though his inconsistent statement is troubling, after the passage of so much time, and without a clear indication of Witness 10's motivations, the Review Team cannot simply take his statement at face value. This is especially so in light of the circumstances in which Witness 10 gave his statement. As Witness 10 explains in his letter, he says that Kuby contacted him by sending legal mail to his professional address. The letter was required to be sent as part of ongoing Freedom of Information Law litigation, instituted by Kuby in an attempt to gain access to original witness statements and grand jury testimony. Because the letter was marked "legal mail," he says, it was opened by the mailroom at Witness 10's office and flagged to the attention of his company's Legal Department, leading Witness 10's supervisors to question him about his involvement in the Friedman case.<sup>461</sup> After a "candid" conversation with his supervisors, in which Witness 10 told them he was not abused, he contacted Kuby to "make certain there were no further intrusions into [his] work or family life with this matter." During that conversation, after Kuby "urged [him] to come forward," Witness 10 drafted his recantation statement.<sup>462</sup>

It is difficult to credit a recantation made under these circumstances, especially as it appears that Witness 10 chose to come forward only when his privacy was threatened. Recantation testimony is inherently suspect, and in this case, is further complicated by the fact that the recanter will not meet with the Review Team to discuss his statement. As a result, Witness 10's statement demonstrates none of the indicia of reliability regularly used by courts to assess recantation testimony.<sup>463</sup> Therefore, this unconfirmed recantation does not alter the balance of the evidence, which otherwise inclines towards Jesse Friedman's guilt.

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"There is no form of proof so unreliable as recanting testimony."<sup>464</sup> After so much time has passed, the reasons that a witness *might* recant are innumerable. The witness might, for example, desire to avoid all publicity, and so deny all relevant knowledge; or he might wish to limit the chance that he will be spoken to again, and simply tell each interviewer what the interviewer wants to hear. Some witnesses may truthfully recant, and the Review Team acknowledges that recantation testimony may, under certain circumstances, prove credible. Those circumstances were not found to exist here.

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<sup>461</sup> A830.

<sup>462</sup> *Id.*

<sup>463</sup> See *People v. Davenport*, 233 A.D.2d 771, 773 (3d Dept. 1996) (recantation not credible where unsworn, and proffered only by defendant's relative) and *People v. Bermudez*, 243 A.D.2d 367, 367 (1st Dept. 1997) (declining to credit a recantation obtained under "highly suspicious circumstances"); cf. *People v. Deacon*, 96 A.D.3d 965, 968-69 (2d Dept. 2012) (recantation credible where consistent with other testimony, and where original, adverse testimony resulted from fear of gang reprisal).

<sup>464</sup> *Shilitano*, 218 N.Y. at 170.

It must be added that, in the case of “recantations” gleaned by the *Capturing the Friedmans* producers, the interviewers compounded the problem of the inherent unreliability of recantation testimony by resorting to manipulative questioning techniques. In interviews, the interviewer represented Jesse Friedman’s innocence as a *fait accompli*, and encouraged witnesses to come forward to support their predetermined conclusion. In outreach to some witnesses, *Friedmans* producer Marc Smerling wrote, “I am yet to find one boy who took the computer classes who said that he was victimized as described in his Grand Jury testimony”—a fact Smerling could not possibly know, as grand jury testimony is and remains confidential. He even went on to claim that, though he had “spoken to several complainants,” “not one has a clear recollection of the crimes they testified to.”

Further, almost all interview transcripts reviewed for this re-investigation were troubling. Some “questions” posed during those interviews were preceded by paragraphs (or even pages) of language insinuating Jesse’s innocence. In one case, the interviewer, producer Marc Smerling, actually insinuated that he was working with the District Attorney, saying, “the Nassau County District Attorney has asked us to present a tremendous amount of material.” The Review Team cannot credit information of this character, produced through these methods, standing alone. The “recantation” testimony offered in this case does not undermine the integrity of Jesse Friedman’s conviction.

## **B. Corroborating Evidence Supports The Conviction**

Apart from victim testimony, the Review Team has obtained substantial evidence corroborating Jesse Friedman’s involvement in criminal activity. First, and most importantly, Arnold Friedman confessed to his brother Howard that both he and Jesse were guilty. The Friedman classes also substantially affected the lives of several computer students, resulting in circumstantial evidence of abuse that, at the time, evaded detection. Today, that evidence further supports Jesse’s involvement in his father’s crimes.

### **1. Arnold Friedman Confessed His Guilt, and Jesse’s, to His Brother Howard Friedman**

The Review Team spoke with Howard Friedman, Arnold Friedman’s younger brother. Howard began an initial telephone conversation succinctly: “Jesse is guilty and you’re going to ask me how I know,” he said. “Because Arnold told me.”

Howard explained that Arnold had confessed to him in a late-night conversation at Arnold’s Great Neck home, soon after his arrest. One night, after the rest of the family had gone to sleep, the two brothers were watching a local news report describing pornography found at the Friedman home. Arnold broke down crying, turned off the television, and solemnly admitted: “I want you to know I misbehaved in the basement. I didn’t do everything the kids say but I did a lot of things I shouldn’t have. I wanted to tell you that.” When Howard asked if Jesse was also guilty, Arnold said, “Yes, [Jesse] misbehaved in that class.” Arnold also admitted that he had molested Jesse. Howard was sure of this: “I will never forget his words to me.”

Howard had alluded to this confession, he said, in a letter to Arnold. The Review Team was already aware of this letter, which reads, in relevant part:

*You looked me in the eyes and squeezed my hand and said “Howie, please believe me, that I never molested the kids. I may have been a little free with my hands, I may have set them on my lap, I may have hugged them, I may have shown them pornographic material, but, I never, never, hurt them, screwed them, or anything like that.”*<sup>465</sup>

Arnold had made Howard promise not to share their conversation until after Arnold’s death and Jesse’s release from prison. Howard said he kept his word. After speaking with the Review Team, though, he said he felt that “a huge rock has been lifted off [his] chest.”

Continuing, Howard said that he was “strongly opposed to [his] nephew’s attempt to overturn his conviction.” And, he said, “Jesse cannot tell right from wrong.” He also described an odd conversation he had with Jesse, just before Jesse began to serve his prison term. Over the phone, Howard had asked Jesse if he was guilty. David Friedman heard the question and told Jesse to be “careful how you answer.” In response, Jesse said something to the effect of, “I may have slapped them around a bit.”

Howard was also able to confirm that Arnold had been a pedophile for all of Arnold’s adult life. As a child, in fact, Howard had been Arnold’s first victim.<sup>466</sup> He vividly remembered the first time Arnold, then a teenager, sexually assaulted him. Left alone by their mother, Arnold threatened Howard into cooperating, and then anally sodomized him. Arnold also assaulted and abused him in other public places, such as in a locker room, a changing area, and at a public pool. Thereafter, the brothers’ relationship was difficult. But, by the time of Arnold’s guilty plea, the brothers had become closer. Howard remained close to the family, and attempted to support them in any way he could. Over the years, Howard provided substantial financial support to his brother’s family. Moreover, at Jesse’s request, Howard wrote a letter to the parole board asserting his belief in Jesse’s innocence.<sup>467</sup> He told the Review Team he did so to help his nephew gain early release, though he has, in fact, always believed that Jesse is guilty.

This last of Arnold’s confessions, also implicating Jesse, seems to have been a closely guarded family secret. Shortly after Jesse’s release, Howard said, he shared it with both David and Seth Friedman. Seth was unsurprised (“I knew it!” he exclaimed, according to Howard), while David was stunned. Arnold’s confession to Howard is also

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<sup>465</sup> A501.

<sup>466</sup> As Arnold said in his autobiographical “My Story,” “[w]hen I reached adolescence I sought out partners for my emerging sexuality. My first partner, when I was 13, was my 8 year old brother. I had overt sexual relations with him over a period of a few years.” A538.

<sup>467</sup> A917, letter from Howard Friedman to Richard Wilbur, Parole Officer, Southport Correctional Facility (Sept. 23, 1994).



known to the *Capturing the Friedmans* filmmakers. When filmmaker Andrew Jarecki first contacted and interviewed Howard during production of the film, Howard declined to give him “full and honest answers,” out of a genuine fear that the film would build Arnold into a “monster” or the story’s central villain. In fact, in the film, Howard said he could not remember whether Arnold had molested him,<sup>468</sup> and cried, expressing disbelief that his brother could have engaged in such crimes.<sup>469</sup> Thereafter, at an uncertain date after the film’s release but before this investigation began, Howard called the filmmaker and related the full contents of Arnold’s confession to him.

Nevertheless, Howard’s account has not appeared in any of the filmmaker’s public statements concerning this case, and Jarecki never mentioned Howard Friedman to the Review Team, notwithstanding his central importance to Jesse’s claim of innocence.

## 2. Parents Described Corroborative Details to the Review Team

During the course of this re-investigation, the Review Team also spoke with several parents who had been involved in the original prosecution. In two cases, those parents shared information tending to corroborate their sons’ abuse.

### a. *Parents of Witness 8: Complainant’s Witness*

The Review Team was able to speak with the father and mother of Witness 8. According to his parents, Witness 8 is extremely successful in his chosen field. But his family life has suffered as a result of his participation in the Friedman class decades earlier.

Witness 8’s mother had forwarded him all letters sent by the Review Team, she said, but it did not surprise her to learn that he had not contacted the Review Team in response. She believes that her son was abused, but she does not know the specifics. She said that her son claims that he no longer remembers anything, but she believes he may just not wish to discuss it.

Witness 8’s mother told the Review Team that there were warning signs at the time. For one, she said, parents were not permitted into the Friedman house when picking up their children. She remembers once knocking on the front door, which was locked, and then being instructed through the window by one of the Friedmans to go wait in her car. In addition, she would ask her son and his friend what they were learning in the class, and they would look at each other sheepishly and giggle. She went on to say that Witness 8 was never the same after the Friedman class. He became very sad, and acted like a victim. He never attended group therapy but saw a private psychologist for a number of years. Witness 8 blamed his father for what had happened to him—it was his father’s idea that he take the class—and this led Witness 8 to become angry and act out.

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<sup>468</sup> A195-96.

<sup>469</sup> A176, A218-19.

Witness 8's father told the Review Team that he was "convinced that something very damaging happened in the basement." He remembers his son implying, many years later, that he was not physically molested, but that he "had to visually participate as a third party observer to graphic, predatory pedophilia." He believes Witness 8 is using this as a coping mechanism. He feels that his son's childhood suffered and he was very emotionally affected by what happened at the Friedman house. It totally changed their relationship, he says. There were a lot of trust and anger issues, which led to conflict within the family. He said he always carried guilt with him, because he is the one who urged Witness 8 to take the class.

Though neither was present for their son's interview with police, Witness 8's father and mother split on one question: his mother believed that the police were disrespectful, and may even have suggested facts to her son, but bases this only on *her* interactions with police, not her son's. Witness 8's father, though, stressed that police were appropriate and professional, though police did return several times.

*b. Father of Witness 19, a Non-Testifying Victim*

The father of one non-testifying victim, Witness 19, also described the far-reaching effects that the Friedman case had on his life. On December 4, 1987, Witness 19 gave an inculpatory account to police investigators, stating that he was anally sodomized by Arnold at least five times, and by Jesse at least twice. This statement made the child one of the first to describe experiencing this level of abuse by Jesse. Nevertheless, he never testified before the grand jury, and his statement never translated to indictment counts.

Witness 19's father recalled two detectives—later identified as Detectives Dopman and Jones—interviewing his son. Though the detectives requested to speak with his son alone, he insisted that he and his wife be present at the interview. He described police questioning as "gentle, non-leading and non-aggressive," and composed almost entirely of open-ended questions. As to Witness 19's responses, his father remembered him denying any abuse at first, leading him to believe that the police were wasting their time. Then his son "erupted" and offered a full, shocking account of abuse. When his son described being abused by Arnold and Jesse Friedman, Witness 19 reacted physically. He felt like he was having a heart attack, and his wife may even have called an ambulance.

Today, Witness 19's father recalls that his son showed early warning signs of abuse. At the time, his son directly asked not to be sent to the Friedman's computer class and, after attending, began "fixating" on a "threat about someone coming out from under a car and taking him away." This description accords with threats reported by other students, including Witness 18.

*c. Summary of Interviews with Other Parents*

Several other parents spoke with the Review Team. Some expressed complete confidence in the police investigation. Witness 13's mother and father believed the police

were very professional. Witness 2's mother described them as "wonderful," though her son reported otherwise. Witness 5's mother observed police as they interviewed her son, and said her son's body language suggested that he did not seem bothered. As a result, she trusted the investigation. This mother also stated that her son took a pair of scissors, and cut up his blanket—an act she found both disturbing and uncharacteristic, and believed to be a consequence of his victimization. Witness 16's father did not observe his son's interview, and could not speak to its form. He shared only one thing of note: that his son spoke with police behind closed doors, and that afterwards, his son was extremely upset.

One parent, the father of Witness 18, told Andrew Jarecki that police "were suggesting the answers [to questions] to the kids" during interviews. Contacted by the Review Team, Witness 18's father said he was not, in fact, even present for the police interview with his son. He had no memory of the exchange with Jarecki, though he confirmed that the voice on Jarecki's recording was his own. In any event, he was not now of the opinion expressed in that interview—nor, his wife said, was she—and he believed instead that Jesse Friedman was "part of the evil that lived in that house."

Witness 20's mother remembered observing one police interview. The investigators' questions, she recalled, were all open ended and general in nature, and their manner gentle. Her husband was of the same opinion. Though her son, Witness 20, never reported any criminal activity by either Friedman, she did recall walking in on her son and seeing him playing a videogame that depicted naked women. Asked, Witness 20 said that Arnold Friedman had given it to him. Witness 20's mother then confronted Arnold about the game, and Arnold apologized, saying that it must have been an accident. However, she got the sense that he was aware of the fact that something was very wrong, and that it was not an accident at all. At the end of that session, she believes, she did not re-enroll her son. Another adult, the mother of a non-complainant, attended Arnold Friedman's adult education class, and reported that Arnold showed this class a videogame in which a penis could be made to rise and fall. The description loosely resembles a game described elsewhere as "Stroker," and belies the claim that Arnold was wholly ignorant of pornographic games in his disk library.

Lastly, the Review Team was able to speak with the mother of one of Arnold's victims, a former family friend, who met the Friedmans at their vacation home in Wading River. Speaking recently to the Review Team, the mother explained that her child, Witness 31, told her that Arnold had molested him. But he only told her fifteen years after the abuse occurred, when Witness 31 was twenty-eight, and Arnold had just been arrested. This parent is unique in that, during the course of the original investigation, Arnold himself actually acknowledged that he had abused her son.<sup>470</sup> After Witness 31 told his mother about the abuse, she told Elaine Friedman, who admitted to Witness 31's mother that she had found disturbing "pictures" in Arnold's desk, but never confronted

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<sup>470</sup> Arnold admitted this crime publicly, in his autobiographical "My Story" (A539), to his sons shortly after his federal arrest, and in a private letter to David Friedman. *See* A484.

Arnold about them. Arnold, in turn, admitted to his family that he *had* sexually molested Witness 31. Though Witness 31 waited fifteen years to tell his mother about Arnold's abuse, he had previously hinted to the fact. Witness 31's mother invited Arnold to play piano at Witness 31's wedding, and when Witness 31 saw Arnold there, he told his mother that Arnold was a "pervert," but said no more.

### 3. Circumstantial Evidence Further Corroborates Witness Accounts

These accounts suggest that certain of the Friedmans' students did, in fact, show signs of abuse at the time, but these "warning signs" were not recognized. This was a common experience. For example, two parents recalled their sons asking to be pulled out of the Friedmans' class, and regretted ignoring their sons' requests. Both children later reported abuse.

Additionally, at least one parent told police that she found blood in her son's underwear, and remembered seeing his shirt unexpectedly wet. These facts corroborate her son's claim that he was sodomized, and that he soaked his shirt to attempt to wash semen from it. Detective Sergeant Galasso remembered hearing another child's parents state that, at some point, their son began taking off his clothes every time someone visited their house. And, from a third set of parents, Detective Sergeant Galasso learned that another complainant began to lose his hair after enrolling in the Friedmans' class. (A recent interview with a classmate confirmed this detail.) Still another child's mother remembered that, after participating in the Friedmans' computer class, her approximately ten-year-old son began to defecate while clothed. A report in *Newsday* chronicled another parent's memory of the changes her son went through during the Friedmans' class:

*Soon after enrolling in the class, she said, her son's behavior changed. He began drawing sharks and believed they were swimming in his bedroom floor's blue rug. Once, when she asked her son what he was learning in the class, he and a classmate looked at each other with "sheepish grins on their faces" and giggled.*<sup>471</sup>

The last description was independently verified by the Review Team's interview with the parents of Witness 8. Some parents also said they commonly received calls from Arnold and Jesse Friedman offering free computer time, and reduced rates. These recollections corroborate witness's reports that they received phone calls from the Friedmans, in which the Friedmans feigned friendliness with parents, but when speaking with students, threatened them to guarantee their silence. The above stands in marked contrast to the

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<sup>471</sup> Victor Manuel Ramos, *Challenging 'Friedmans': Out of the Shadows*, *Newsday*, A5, Feb. 29, 2004.

claim advanced by all of Jesse Friedman’s advocates, that “no parents had discovered or reported any of the behavioral signs of sexual abuse in children.”<sup>472</sup>

Other former class participants described the mental anguish they continue to suffer, years after the case’s conclusion, and the trauma of re-experiencing this abuse both upon simply hearing about the release of *Capturing the Friedmans*, and while speaking to members of the Review Team. The consensus of social scientists is that molestation by an acquaintance is under-reported, especially among boys,<sup>473</sup> meaning that “most children either maintain the secret or delay reporting for significant periods of time.”<sup>474</sup> Many victims did speak out, and those who did not cannot be blamed for their silence.

Furthermore, other children were unquestionably exposed to sexual content. Witness 6 saw sexual videogames in the class, and gave police one disk he had been allowed to borrow from the Friedmans, containing “Stroker,” and “Dirty Movie.” A non-complainant, Witness 32, reported to police that students were allowed to borrow sexual videogames, and turned a disk containing “Strip Poker” over to police. Arnold even admitted that he did share this content: while preparing his defense, Arnold compiled a list of potential defense witnesses. On that list, he included the name of Witness 33, and acknowledged that he had given this child a copy of “Strip Poker.”<sup>475</sup> He wrote that the child had repeatedly asked for a copy of the game, and that he only gave Witness 33 the game after consulting with the child’s mother. This admission sharply contradicts the claim that sexualized videogames made their way into the Friedman class only accidentally, if at all: if Witness 33 knew to ask Arnold for the game, it follows that he both knew the game was present in the classroom, and that Arnold controlled access to it.

For his part, Witness 33 acknowledged to the Review Team during a recent interview that he did possess a copy of “Strip Poker” as a child, and that it likely came from the Friedmans. The same witness also told the Review Team that Arnold Friedman would sometimes touch and pat his buttocks, and that the pat would last a little too long—it would linger. Witness 33 thought the contact was weird but innocuous, not worthy of being reported, and did not know if he ever told police about it. Here too, then, a witness self-censored. This witness nonetheless signed an affidavit in support of Jesse’s motion to vacate his conviction.

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<sup>472</sup> De Becker & Horowitz, *supra* note 13, at 14. Jesse’s advocates have repeated this claim on many occasions, for example, in Jesse’s brief to the Advisory Panel, Jesse’s habeas petition, Peter Panaro’s affidavit (see Panaro Aff. ¶ 15), and Arnold Friedman’s Open Letter (see A557, 564). An entire section of Jesse’s first motion to vacate his conviction, under N.Y. C.P.L. § 440.10, is dedicated to this now-disproven claim.

<sup>473</sup> See Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOLOGY REVIEW 271, 274-75 (2002).

<sup>474</sup> *Id.* at 289.

<sup>475</sup> See A301-02.

### C. The Review Team Was Not Able to Corroborate All Accounts

Sometimes, no corroboration could be found. In several cases, the Review Team was not able to substantiate criminal acts mentioned by some witnesses. Additionally, some critical evidence was never compiled or reviewed during the original prosecution. These instances may raise unanswered questions—today the questions may be unanswerable—but they do not suggest a “reasonable probability” that Jesse Freidman was wrongly convicted.

#### 1. Class Rosters and the “Friday Class”

One significant problem in assembling corroborating evidence is that, based on the Review Team’s efforts, Arnold Friedman did not keep a complete or reliable class roster, or any attendance records whatsoever. These records would be necessary to answer two critical questions: who was in the room while criminal sex acts took place, and what should they have seen? As it stands, this partial record seems to both support and undermine the evidence for Jesse Friedman’s guilt, and no unequivocal conclusion may be drawn.

##### *a. No Reliable Class Rosters Were Found*

The fundamental difficulty in recreating class rosters is that witnesses’ memories of their classmates, when pieced together, do not yield a consistent picture. Arnold Friedman did not keep records of his class membership or of attendance, both of which are necessary for a complete record. Additionally, make-up sessions were given, and Arnold removed at least two students mid-session. And, though police compiled partial rosters, officers never recorded how, and on the basis of what evidence, the rosters were compiled. These difficulties preclude an easy determination about who should have seen what.

The makers of *Capturing the Friedmans* claim to have solved this difficulty, and in an “evidence reel” screened to a Great Neck audience in the fall of 2012, asserted that problems of corroboration raise serious issues concerning the case against Jesse Friedman. Referring to three non-complainants, the film asserts, for example, that:

- “[Student #1] [REDACTED] was unaware [that] his classmate [REDACTED] alleged any abuse.”
- “[Student #2] [REDACTED] attended class alongside multiple Complainants, [but he] remembers [the] class fondly.”
- “Non-complainant [REDACTED] never saw 67 acts of sodomy allegedly occurring right next to him.”

These statements, and others like them, are misleading. The exchanges that apparently led the production team to conclude what [REDACTED], [REDACTED], and [REDACTED] *must* necessarily have seen all appear to be the product of suggestion. In one representative exchange, the interviewee tells the interviewer that he cannot remember which class he attended. The interviewer responds by *telling* the interviewee what class the filmmaker *believes* his

Another example of this questioning is also representative. In his PowerPoint presentation, Jarecki states: “[Student #1] was unaware his classmate [REDACTED] alleged any abuse.” Yet the interview segment upon which Jarecki relies for that conclusion paints a very different picture.

A few lines later, Student #1 states that he cannot remember a set of names:

By the end of the interview, and without obtaining any other information, Jarecki has placed Student #1 into a class with those very same people:

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From this point on the filmmaker is free to draw whatever conclusions he chooses concerning what abuse Student #1 should have seen based on the class into which the filmmaker placed him. But the Review Team finds these conclusions wholly unreliable.

*b. Case Study: the “Friday” Class*

Only two classes may be reconstructed with any precision. One is the Friday session held in November of 1987, which abruptly terminated with Arnold Friedman’s arrest. The autumn “Friday class” was composed almost entirely of complainants: six of nine reported experiencing abuse. But, even though many of the members of this class reported being abused at *some point*, such as in prior sessions with other classmates, few reported being abused during this timeframe. Even so, one observer—Witness 26, the class’s assistant teacher—described observing unusual details about the class, even though he denied seeing any sexual abuse take place.

Witness 26 was a local high school student, and replaced Jesse Friedman as assistant teacher for this class while Jesse was away at college. Witness 26 worked in Arnold Friedman’s class for just over two months, from October 8, 1987, to November 20, 1987. In an interview conducted on December 3, 1987, he discussed a series of details, all of which suggest that something out of the ordinary happened on Fridays in Arnold Friedman’s classroom. In his statement, Witness 26 noted that:

- While cleaning up one day, he encountered both “Strip Poker” and “Dirty Movie” in the class videogame library. He also recalled that only members of the “Friday class,” and not the Thursday class, were allowed to bring disks home from this class library.
- Witness 26 observed Arnold Friedman lean over the children to assist them with their computers. Similarly, he saw Arnold reading to two children from a set of magazines off to the side of the class. Witness 26 never saw what was in the magazines.
- During the Friday class—but only then—Arnold Friedman would close a “sliding door” to separate the classroom from the hallway and the rest of the house. The door was to be kept closed at all times, even when Witness 26 left the room briefly, such as to go to the bathroom.
- Arnold Friedman’s last computer class was held on Friday, November 20, 1987—just a week after the first newspaper report of Arnold Friedman’s indictment on federal charges. On that day, Witness 26 arrived, set up the machines as he usually did, and prepared for the class to begin. Only one child, Witness 2, arrived. Arnold Friedman dismissed Witness 26 and Witness 2 after a short period of time. The next day Arnold called Witness 26 and informed him that he would be suspending *only* the Friday class on his doctor’s advice, to avoid “over-exerting” himself.

Witness 26 was never prosecuted, and his name drops out of the case record after his only interview with police. Even if he saw nothing more, what he did see supports an inference that something about the Friday class merited both secrecy and special treatment.



2. Witness 25, a Non-Complainant, Denied, Then Admitted, and Now Denies Again Experiencing or Seeing Any Abuse

Witness 25 was part of a group of three children who were often described together by other witness reports. All three attended the Friday class. However, though at least two of the three were interviewed by police—and other students named each as witnesses to, or victims of, sexual abuse—none of the three ever disclosed abuse to police. (In the Close-Out Statement, Arnold Friedman denied abusing Witness 25.)

Of these three, the Review Team was able to speak only to Witness 25.<sup>476</sup> The other two witnesses never responded to the Review Team’s outreach attempts. Witness 25 is also the subject of a recent opinion piece by his mother, Arline Epstein. In it, Arline Epstein states that her son:

*[H]eld out through the detectives' questioning, and then through months of group therapy focused on helping children “remember.” After group therapy came months of individual therapy—along with my gentle but persistent questioning, at the suggestion of his therapist. Finally, my son talked. He told his therapist, and later me, detailed stories that matched the acts of abuse we’d been told about by detectives. But he refused to make a statement to police or testify to the grand jury.*<sup>477</sup>

The article misstates several key facts—chief among them, that one of the Friedman witnesses has “unconditionally recanted his accusations”<sup>478</sup>—and conveys the mistaken impression that Witness 25 had the opportunity to “make a statement to police or testify to the grand jury” after falsely admitting that he was abused.<sup>479</sup> In fact, Witness 25 only “talk[ed]” in 1989, long after the case had ended, and therefore, his “accusation” could not possibly have affected Jesse Friedman’s 1988 guilty plea. Nonetheless, Witness 25’s story demonstrates several of the difficulties involved in reconstructing this twenty-five year-old case, and raises unanswerable but troubling questions.

a. *Initial Meeting with Witness 25*

Witness 25 spoke with members of the Review Team early in the re-investigation, and re-affirmed that he had never witnessed abuse, and that he was never abused. When

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<sup>476</sup> According to Detective Sergeant Galasso, one of the two remaining individuals was interviewed and did not disclose any abuse. But his parents believed he was holding back, and asked police to return. According to Witness 25, the same child had admitted to therapists that he was abused. (It is not clear how Witness 25 knew this.) No formal, sworn statements exist from either individual.

<sup>477</sup> Arline Epstein, *A Mom’s Journey with the Friedmans*, NEWSDAY, Mar. 28, 2013, available at <http://www.newsday.com/opinion/oped/epstein-a-mom-s-journey-with-the-friedmans-1.4931383>.

<sup>478</sup> *Id.* The recantation is not credible, as explained in Section IV.A.5(c), *supra*.

<sup>479</sup> Epstein, *supra* note 477.

asked about therapy, he said that his mother placed him into therapy shortly after police investigators visited their home.

Witness 25 said the he felt pressured by police to disclose: one officer told him he would incline towards homosexuality if he failed to do so. But, he faced considerably more pressure from his mother and his therapist to admit that he had been victimized by the Friedmans. He also acknowledged that in 1989, months after Jesse Friedman's guilty plea, that pressure led him to lie and say that he had been abused because he believed it was the only way he would be permitted to bring an end to therapy. But he never made this "confession" to the police or to the District Attorney.

When asked to go into more detail about the therapy he had received as a child, he could not recall it. At the time, prosecutors asked permission to speak with his mother about his experience in therapy and, in response, Witness 25 admitted that, as of 2010, he had not yet told his mother that he had lied about being abused more than twenty years earlier.

*b. Subsequent Interview with Witness 25 and His Mother*

Two years after speaking with the Review Team, Witness 25 told his mother, in an email sent to her while she was away on vacation, that he had never actually suffered any abuse. Arline Epstein then went to the press to present her story.<sup>480</sup> Shortly thereafter she reached out to the District Attorney's office and asked to present material she had preserved from the original prosecution. She ultimately came in to be interviewed, and when she arrived, she was accompanied by an employee of Andrew Jarecki's film company.

For her interview, Arline Epstein read a prepared statement, and with the assistance of Jarecki's employee, circulated documents from a large binder. When Jarecki's employee left at the conclusion of her prepared statement, Epstein stated that she had been prepared for her interview by Jarecki, Smerling, Gavin de Becker, and Jesse Friedman himself. Jesse, she said, advised her on how to phrase her comments to the Review Team, while Andrew Jarecki and Marc Smerling helped her prepare her statement. The group was also involved in curating and annotating her binder of prepared documents. Arline Epstein also acknowledged that she was not, in all cases, speaking from her own knowledge. When the Review Team asked how she knew specific facts, she acknowledged that she knew some only because "Andrew [Jarecki] told" her.

At the end of the interview, Epstein offered copies of her binder to the Review Team, but prosecutors noticed that the copied binders were incomplete—Arline Epstein's binder contained documents that had never been circulated to the Review Team, and were not included in the copies. When asked why, she said that she was unsure. She then freely shared the remainder of her notes.

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<sup>480</sup> See Hella Winston, *Re-Capturing the Friedman Story*, THE JEWISH WEEK, Nov. 13, 2012, available at <http://www.thejewishweek.com/news/new-york-news/re-capturing-friedman-story>.

c. *Review of Arline Epstein's Notes*

The complete binder contained detailed notes kept by Arline Epstein during the pendency of the original case, along with her recent annotations. This material adds important background information and supports conclusions drawn elsewhere by this investigation. It shows, for example, that Witness 25 was enrolled in the “Friday class” alongside several complainants, and so would be expected to have seen, or been aware of, any wrongdoing. Witness 25’s desk faced the wall, he said, a memory supported by his contemporaneous diagram of the classroom. And his family traveled: he remembered attending make-up sessions, and that he missed class on at least those occasions.

Arline Epstein’s notes also confirm that her son, Witness 25, did not disclose until 1989, after Jesse Friedman’s guilty plea, and that he never shared this with police, such that he had no effect on the case. The notes also show that Arline was told that Arnold had never actually abused Witness 25, a point that Arnold Friedman himself confirmed in the Close-Out Statement.

Her notes also contain a detailed account of how Witness 25 eventually did disclose abuse. It was not abrupt: Witness 25 first indicated to his mother that he was “ready to remember,”<sup>481</sup> and then told her that he had been abused.<sup>482</sup> According to Arline Epstein’s recent explanation of the disclosure, her son disclosed by responding to “yes or no” questions that she formulated, based on “what she had heard from Detective Sergeant Galasso” and from other parents.<sup>483</sup> As proof, she gave prosecutors a page of handwritten text, with words haphazardly splashed across the surface. But the notes are more narrative in form than one would expect of the checklist-style questioning Arline Epstein describes. For example, among other things, she recorded her son saying, or agreeing with her prompts, that:

- The bathroom was used to “wash off back”
- It was “almost as bad to watch.”
- There was “moaning in room.” It is unclear what room is being described.
- After “Jesse [was] gone” it was “much better”
- “Jesse followed kids in w/ camera in bathroom”<sup>484</sup>

To the back page of his mother’s notes, ten-year-old Witness 25 added in his own handwriting that Arnold, Jesse, and Goldstein were “schmucky bitchey fucking asshole

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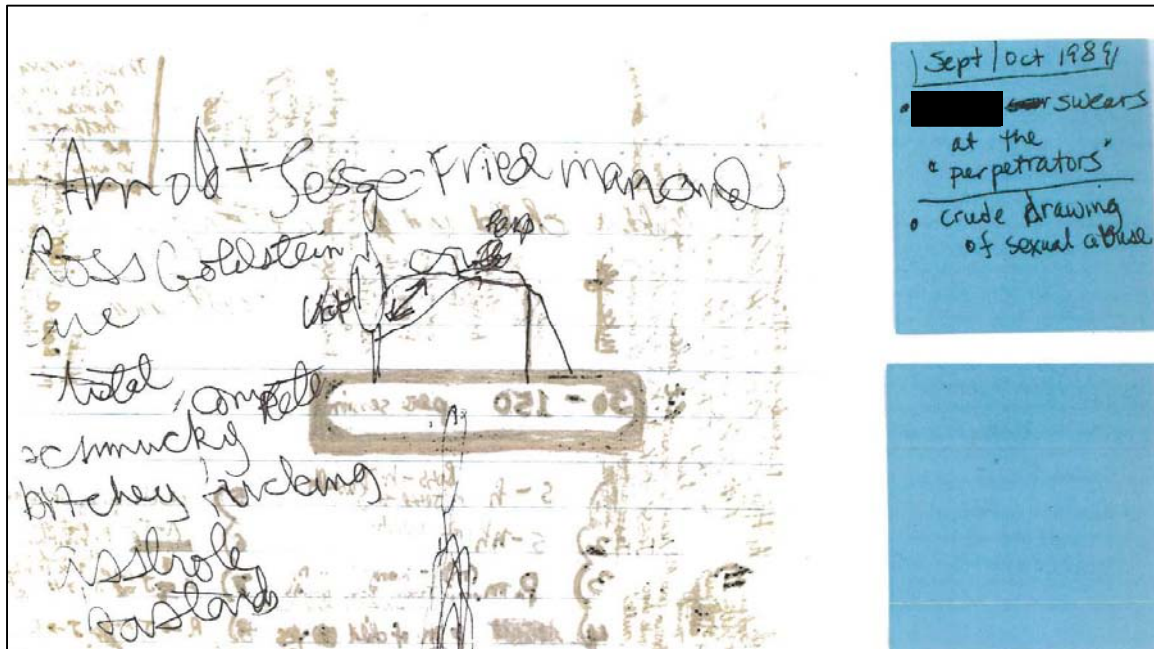
<sup>481</sup> A872-75, handwritten notes, dated September 1989.

<sup>482</sup> A876-81, handwritten notes and drawings, dated October 1989.

<sup>483</sup> *Id.*, and accompanying explanatory notes.

<sup>484</sup> *Id.* Another student, a non-complainant, did tell the Review Team that, while urinating in the Friedman’s bathroom, he heard the door open behind him, saw a flash of light, and when he left, saw Jesse Friedman standing there, possibly in the company of one of his friends. Asked what the flash was, Jesse denied that any such thing had happened

bastards,” and drew a stick-figure diagram of a “vict.” and a “perp.” physically interacting.<sup>485</sup> (See image, below.)



Witness 25 also drew a map of the Friedman house that showed where children were abused in the classroom, and diagrammed Jesse Friedman’s bedroom, including the location of both his bed and his candy and gum supply. The portion of Arline Epstein’s notes containing Witness 25’s handwritten additions was initially omitted from the binders prepared by the filmmaker and distributed to the Review Team. Another document, an undated page from the binder, might suggest a complex and tense relationship between Witness 25 and his former classmates, in some way related to who had disclosed, and who had not. The page contains the following message:

BWS  
 “IDWTTAI! IDR! IL!”<sup>486</sup>

Witness 25 said that he used this “code” on other occasions when he was a child, though his mother does not remember any other example. Arline Epstein and Witness 25 translate the message as, “I don’t want to talk about it! I don’t remember! I lied!” and imply that it casts further doubt on Witness 25’s initial disclosure of abuse.

But even accepting this interpretation, it is unclear what conclusion can be drawn from it. The page is undated, and by Epstein’s own admission, was found out of context, rendering impossible any attempt to date the document. Epstein and de Becker simply *assume* that this “admission” follows, and describes, Witness 25’s false disclosure to his

<sup>485</sup> *Id.*

<sup>486</sup> A882, handwritten note.

mother.<sup>487</sup> However, Witness 25 acknowledges that the quotation marks and prefatory “BWS” in the document could indicate that Witness 25 himself was not the “speaker” in the note—that it was not him who “lied.” Rather, he said that the “B” in “BWS” could refer to one of two individuals whose names begin with a “B,” one a complainant and the other a non-complainant, and that the “WS” could expand to either “*will* say” or “*would* say.” Depending on who, if anyone, “lied,” the meaning of the document changes completely. In brief, this last, extraneous piece of paper can be explained in any number of ways, has no certain interpretation, and therefore has no evidentiary value.

\* \* \* \* \*

Witness 25’s insistence that nothing out of the ordinary occurred in the Friedman house is potentially helpful to Jesse Friedman’s defense, considering the number of children who gave statements indicating that they saw Witness 25 being abused, or believed he was present while others were victimized. But Witness 25’s experience does not necessarily cast doubt on Jesse’s guilty plea, especially when balanced against the other evidence the Review Team uncovered. In addition, Witness 25 “disclosed” that he was abused in 1989, well after Jesse Friedman’s December 1988 guilty plea, and his allegations did not have any effect on Jesse’s decision to plead guilty.

Ultimately, Witness 25 is one of several students who are referenced in statements by complaining witnesses as having been victimized by the Friedmans, but who did not report sexual misconduct. Another individual states that he attended only one class session, that he was never abused, and that he never witnessed abuse. This individual too may have been named as a victim by a complainant who gave multiple statements to the police. The indication is vague, however, because the complainant provided only a common first name, which this individual happens to share. But here too, the relation is tenuous. No credible evidence suggests that the two individuals were in the same class, and, when asked, the individual did not recognize the name of the complainant who said he witnessed his abuse, nor did he recognize the names of other students. Though these accounts raise questions, they do not cast significant doubt on the larger case.

### 3. The Lack of Physical Evidence

Though several students testified to having their pictures taken while in the midst of sexual activity, no proof of these pictures was ever found. State investigators did find “2 color photos of [a] boy and girl from the neck to the thighs,” but the heads were torn off of the photographs, and it cannot be determined whether these pictures were homemade pornography created by the Friedmans, or representative of child pornography that Arnold Friedman obtained from other sources.<sup>488</sup> Years before the case broke, Arnold also indicated to an undercover law enforcement officer posing as a pedophile

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<sup>487</sup> This, in turn, Arline Epstein dates to somewhere between September and October, 1989. The basis for this, and many of her dates, are not entirely clear.

<sup>488</sup> See A580.

that he preferred homemade child pornography, both photographs and videos, making it all the more likely that he would produce and possess images fitting that description.

According to Jesse's attorney at the time, Peter Panaro, as the case drew to a close, Jesse flew to Wisconsin to ask his father about the photographs that were taken of the class.<sup>489</sup> Panaro even stated, in a letter to the assistant district attorney assigned to prosecute the case, that Jesse was "willing to cooperate in regard to these photographs," and could describe "the number of photographs that he knows were taken, when they were taken, [and] by whom they were taken," but not the whereabouts of the photographs themselves.<sup>490</sup> This claim speaks to either the photographs' existence, or Jesse's willingness to lie about case facts to secure a more lenient sentence.

The lack of evidence, too, could have resulted from evidence being deliberately destroyed or hidden. Between execution of the federal and state search warrants, a full three weeks lapsed. During that time, any homemade pornography that remained at the Friedman home could have been moved or destroyed. It is notable, for example, that during the execution of the state search warrant, investigators found a hidden "false wall" compartment that, in an otherwise packed house, was completely empty. Even Jesse found this surprising when informed by the Review Team—he knew it as a compartment that was full of materials used by David Friedman in his entertainment act.

Additionally, the absence of medical evidence indicative of sexual abuse is not dispositive proof that none occurred. The only relevant medical test available at the time was highly invasive, and would not necessarily have shown whether a victim was penetrated. And, it certainly would not conclusively prove whether the child was subjected to penis-to-mouth contact, an act that met the definition of Sodomy in the First Degree at the time of the case.<sup>491</sup> According to Detective Sergeant Galasso, while the parents were informed of the test, all decided to spare their children this invasive procedure. Though the prosecution could, potentially, have benefited from the results of some of these tests, the mere lack of physical evidence does not mandate exoneration.

Some physical evidence *was* found, however. Federal investigators found three sexual aids with batteries, in proximity to Arnold Friedman's piano; a sexual aid described by some as "child-sized"; large amounts of commercialized child pornography; and computer disks containing pornographic videogames.

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<sup>489</sup> See A346-48.

<sup>490</sup> A347-48.

<sup>491</sup> Because penetration was not an element of the crime of sodomy, one would not necessarily expect to find blood or semen, as Debbie Nathan claimed in *Capturing the Friedmans*: "In the Friedman case the basic charges were completely implausible. First of all you'd have to believe that blood is coming out of these children's orifices, that they're screaming, that they're crying, that their clothes are soiled from semen and blood and yet their parents show up, sometimes unannounced [and] everything looks fine." A172-73.

#### **D. Reservations Concerning the Third Indictment Do Not Taint the Overall Case**

The Review Team retains some concerns related to the third indictment. This document greatly increased the number of charges against Jesse Friedman, while for the first time introducing allegations of “sex games,” and of a third abuser. However, while problems of proof, twenty-five years later, may reflect on the quality of the original investigation and the current limits of available evidence, they are not so grave as to suggest these charges were false, or fabricated for the sole purpose of inducing Jesse Friedman’s guilty plea.

##### **1. New York Substantive and Procedural Law Partially Explain Perceived “Overcharging” in the Third Indictment**

Though the third indictment raised the total number of sodomy charges from the single to the triple digits,<sup>492</sup> a proper understanding of New York criminal law, both substantive and procedural, suggests that prosecutors had a basis for charging the case as they did. At the outset, as discussed above,<sup>493</sup> where the victim is under eleven years old, a single count of sodomy can legally be charged twice under alternative theories. Second, a review of applicable law makes clear that “sodomy” under New York law in 1987 did not require penetration or violence, but only the touching of one’s genitals to another’s mouth or anus.<sup>494</sup>

This provides a partial explanation for the increase in charges. In fact, based on the Review Team’s analysis, the 127 counts of sodomy charged in the third indictment against Jesse Friedman represent seventy-seven distinct acts alleged by seven children, over the course of thirteen months. To the extent that the number of acts charged vastly increased, they were based on witness statements.

##### **2. “Game” Allegations Are Consistent with Known “Grooming” Techniques Used by Pedophiles**

Some skepticism concerning Jesse Friedman’s conviction focuses on charges that Arnold and Jesse Friedman both engineered complicated “games” in which play was used as a cover for sexual activity. Some of the “games” reported by the victims were outlandish. Such “sex games” nonetheless accord with the observed behavioral patterns of pedophiles. Several reported cases document adults using “games” to sexualize children. In a 1990 case in Washington, a child reported that her abuser made her “play funny games,” like “nude ring around the rosy,” and the “happy birthday” game:

*[The victim] said that Uncle Bill’s favorite game was the happy birthday game. “And that’s where he puts his peepee*

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<sup>492</sup> See *supra* Section I.I.

<sup>493</sup> See note 87, *-supra*, and accompanying text.

<sup>494</sup> See *id.*

*in my mouth and shakes it around, and then he says, ‘Here is your happy birthday present,’ and something icky gets in my mouth.” R.T. also said that the [defendants] put candles and marbles in her “peepee.”*<sup>495</sup>

And, experts note that “acquaintance child molesters” typically employ strategies that start from a premise of making children comfortable through play, and then progress to sex acts: specifically, the offender “relies more on techniques involving fun, games, and play to manipulate younger children into sex.”<sup>496</sup>

The Freeh Report, the result of an independent investigation summarizing Pennsylvania State University’s knowledge of sexual abuse committed by former assistant football coach Gerald “Jerry” Sandusky, describes similar behavior. Sandusky created seemingly safe scenarios—here, Sandusky’s lauded Second Mile charity, with its focus on underprivileged children<sup>497</sup>—to place himself close to his desired victim population. From there, he invented excuses to come into physical contact with the children entrusted to his care. For example, Sandusky play-wrestled with one such victim, and later “bear-hugged” the child while showering next to him.<sup>498</sup> Official case records go into further detail, stating that Sandusky would playfully “crack” one victim’s back each night before bedtime, a ritual that would later escalate to oral sex.<sup>499</sup> Sandusky also used “tickling” games to get close to other students.<sup>500</sup>

Another recent scandal at a selective New York school, Horace Mann School, similarly highlights the use of this behavior.<sup>501</sup> There, several teachers have been implicated in the sexual abuse of their students, each with their own “playful” grooming rituals, from a mid-class “frolic” session where the teacher would embrace his students as

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<sup>495</sup> *State v. Swan*, 114 Wash. 2d 613, 625 (1990) (*en banc*) (affirming sexual abuse convictions); *see also*, e.g., *Childers v. A.S.*, 909 S.W.2d 282, 285-86 (Tex. App.—Fort Worth 1995, no writ) (describing, in a case concerning civil liability for child abuse, a game called “doctor/patient,” which one victim continued to “play” even after the child’s parents asked him to stop).

<sup>496</sup> Kenneth V. Lanning, National Center for Missing & Exploited Children, “Child Molesters: A Behavioral Analysis, For Professionals Investigating the Sexual Exploitation of Children,” 27 (5th ed. 2010), available at [www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf).

<sup>497</sup> *See* Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, at 41 (Jul. 12, 2012) (describing the victimization of one “Second Mile” participant).

<sup>498</sup> *Id.* at 41-42.

<sup>499</sup> *See generally* Press Release, Pennsylvania Attorney General, *Child Sex Charges Filed Against Jerry Sandusky; Two Top Penn State University Officials Charged With Perjury & Failure To Report Suspected Child Abuse* (Nov. 5 2011), available at <http://www.attorneygeneral.gov/press.aspx?id=6270>; *see also* Thirty-Third Statewide Investigating Grand Jury, First Presentment Regarding Gerald A. Sandusky, at 2-4 (Nov. 5, 2011), available at <http://www.attorneygeneral.gov/uploadedfiles/press/sandusky-grand-jury-presentment.pdf>.

<sup>500</sup> *See* First Grand Jury Presentment, *supra* note 499, at 5-6.

<sup>501</sup> *See generally* Amos Kamil, *Prep-School Predators: The Horace Mann School’s Secret History of Sexual Abuse*, N.Y. TIMES, June 6, 2012.



they ran around the classroom, to “private parts inspections.”<sup>502</sup> These examples leave the inescapable conclusion that sexualized “play” is not the product of overzealous police imagination, but a common tool used by acquaintance molesters.

3. Varied Recollections Do Not Necessarily Establish that “Sex Game” Allegations Were Untrue

It is of some concern that inconsistencies exist regarding “sex games”: for example, some victims recalled that these “games” were played openly in class, while other students report never having seen such games. The case against the Friedmans—on these specific counts—could have suffered had it proceeded to trial. But it is not possible to evaluate the gravity of these inconsistencies. The difficulty of reconstructing class rosters—to say nothing of the impossibility of compiling class *attendance* records—prevents an accurate determination about when children would have necessarily been in the same room with each other.<sup>503</sup>

Without this information, it cannot be said when a specific crime should have been, but was not, witnessed by another complainant. Tellingly, however, several victims interviewed today *do* remember “Leap Frog” as a fixture in the Friedman class. As noted, two complainants remember the game as explicitly sexual, while another non-testifying victim recalls playing the game, in a non-sexual fashion, sometimes alone with Jesse Friedman.<sup>504</sup>

4. The Timing and Vagueness of “Sex Game” Charges Is Partially Explainable by Developmental Factors

Though allegations concerning “sex games” emerged late in the case and, in some cases, appear vague or inconsistent with other accounts, both issues can be partially explained by the facts of the case and the victim population. It is common for children to delay disclosing sexual abuse, or to disclose abuse at first only partially. Second, some “sex game” allegations were said to have occurred over a large time-frame, rather than on a specific date. This construction makes it all the more difficult to establish the presence or lack of corroboration.

It is easy for anyone, especially a young child, to confuse or forget when any specific event of abuse happened, when the event was part of a continuing course of conduct occurring over a span of several years. The law acknowledges this difficulty, and permits acts to be charged over a period of time.<sup>505</sup> In fact, in 1996, the New York Penal

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<sup>502</sup> *Id.*

<sup>503</sup> See Section IV.C.1, *supra*.

<sup>504</sup> See Section I.H.2, *supra*.

<sup>505</sup> See *People v. Watt*, 192 A.D.2d 65, 68 (2d Dept. 1993), *aff'd*, 84 N.Y.2d 948 (1994) (five-month period “not unreasonably imprecise under the circumstances of this case”). The period, however, must not be so excessive as to frustrate the accused’s ability to defend himself. *People v. Keindl*, 68 N.Y.2d 410, 419-21 (1986) (timeframes for offenses ranging up to ten, twelve, and sixteen month period were, on the facts, “so excessive on their face that they are unreasonable”).

Law was amended to recognize that sexual abuse may be committed as part of a “course of conduct.”<sup>506</sup> Reports annexed to the final bill explain that “course of conduct” crimes are necessary in cases of child sex abuse because:

*[S]tudies of children’s cognitive skills show that the ability to reconstruct and serialize an event or events often does not develop until the age of 10 or 11 years. And while children can accurately recall information relating to an event, they often describe the event with far less specificity and detail than would an adult.*<sup>507</sup>

The New York Legislature has stated that the limits of child cognition are not a reason to discredit allegations of abuse, especially where particularly reliable evidence clearly establishes that the victim has “been repeatedly sexually abused.”<sup>508</sup>

In this case, the indictments recognized the difficulty of pinpointing precisely when an act occurred during a session of Arnold Friedman’s computer class by charging, on some occasions, that acts occurred within a span of months, such as “from on or about the 15th day of December, 1986, to on or about the 27th day of March, 1987.”<sup>509</sup> Therefore, to the extent that any allegations of abuse in this case defy easy placement in the chronology, or lack specificity, this may simply be a function of child developmental psychology, and the accommodations made by New York law for the same.

The delayed disclosure of “sex game” acts is also explainable by resort to child psychology. It is true that, in this case, some victims disclosed gradually: for example, three children gave statements early on against both Arnold *and* Jesse, but dramatically expanded their accusations against Jesse in the third indictment. However, especially because children struggle to remember details of continuing offenses, piecemeal disclosure is to be expected.<sup>510</sup> Accordingly, without more, it cannot be said that the third indictment was flawed simply because children disclosed abuse late in the process. And it is important to bear in mind that, at the time of Jesse’s guilty plea, he and his lawyer were well aware that children had disclosed in piecemeal fashion, and were capable of raising the issue at trial if they believed it to be meritorious.

#### **E. Ross Goldstein’s Recent Recantation Is Not Reliable**

Jesse Friedman’s codefendant, Ross Goldstein, has recanted, but the Review Team finds these self-serving statements unreliable. At the inception of this investigation, the Review Team reached out to codefendant Ross Goldstein to discuss his involvement in the case. At the time, through his attorney Steven Kartagener, Goldstein refused to be

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<sup>506</sup> See, e.g., N.Y. PENAL LAW § 130.75.

<sup>507</sup> Governor’s Program Bill #39R, Memorandum in Support, dated 1996, Bill Jacket, L. 1996, ch. 122, at 7.

<sup>508</sup> *Id.*

<sup>509</sup> Third Indictment, A072.

<sup>510</sup> See Section III.A.5, *supra*.

interviewed. Consistent with his refusal to speak with the Review Team, Goldstein also previously avoided participating in the making or release of *Capturing the Friedmans*.

Goldstein revisited his decision recently. In an interview with the Review Team, he recanted his 1988 admissions and guilty plea relating to charges in the third indictment. Specifically, Goldstein denied seeing or participating in any sexual acts at the Friedman house, though he acknowledged the presence of child pornography in or near the classroom. Based on the substance of his statement, however, as well as information obtained in follow-up interviews, this recantation is not credible.

#### 1. The Codefendant's Absence from *Capturing the Friedmans*

Ross Goldstein was conspicuously absent from *Capturing the Friedmans*, in large part because he refused to be interviewed for the film. Documents disclosed to the Review Team show that prior to the film's 2003 release, the filmmakers and Jesse Friedman made numerous overtures to gain Goldstein's cooperation, but none succeeded. One such document transcribes a conversation between Goldstein and *Capturing the Friedmans* producer Marc Smerling. Throughout that fourteen-page, single-spaced transcript, Goldstein insisted that nothing will convince him to cooperate.<sup>511</sup>

Goldstein went on to describe his discomfort with the filmmakers' characterization of their film as partially "exonerating." In this exchange, Goldstein also referenced a letter he received from Jesse Friedman, in which Jesse asked Goldstein to appear in the film, and seemed to disclaim any previous relationship between the two. This surprised and concerned him:

**Ross Goldstein:** *I will just touch upon one or two things in this letter. Just things like, um, let me see where it is; "you however probably had no idea there was even a computer school in my house nor had you ever even met my dad." Well, that's, that's not true and uh, he obviously (I'm choosing to believe that he wrote this letter) but the bottom line is that he's just not clear about, or just choosing not to remember a more truthful [history]. I'm not saying that...he's just basically making it sound like he never even really knew me...and there's no real reference to like how we actually got to know each other or why I would have ever been brought into the case. He makes it sound as if it's just completely 100% out of left field, and that's...disturbing to me... but clearly the letter was suggested by you guys. That he should write it as an attempt to try to get me to cooperate, because the focus of the letter is on that.*

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<sup>511</sup> A609, transcript of conversation between Ross Goldstein and Marc Smerling. This document was provided to the Review Team by Jesse Friedman, not by the filmmakers. Though undated, this transcript must describe an interview conducted before the 2003 release of *Capturing the Friedmans*.

*Marc Smerling: He looks at the film as being exonerating to some extent...we have found quite a bit of exonerating stuff.*

*Ross Goldstein: That is total...that is something that I would definitely care to share as something completely untrue...that's why I honestly feel partly that me getting involved in the film is not good . . . will not help him.*<sup>512</sup>

Goldstein went on to state that if he were to cooperate in the film, his story would be a “grey area,” in that “[it’s] not going to add up to something in my opinion that’s either gonna exonerate him all the way or make the police look bad all the way.”<sup>513</sup> Later, when asked by the Review Team why he told the filmmakers that he could not help Jesse, Goldstein was unable to explain his statements.

## 2. Early Attempts to Contact Ross Goldstein Were Unsuccessful

Following the start of this investigation in 2010, the Review Team reached out to Goldstein, through his counsel Steven Kartagener, to request an interview. Throughout 2010 and 2011, Goldstein denied the Review Team’s requests.

However, in late spring of 2012, filmmaker Andrew Jarecki reported that he had spoken extensively with Goldstein. Thereafter, in the summer of 2012, the filmmaker notified the Review Team that Goldstein had retained new counsel, Ameer Benno, and expressed confidence that Goldstein would “share his story” with the Review Team once “a few ground rules are set out.”<sup>514</sup> This effort failed after several rounds of negotiations.

In March 2013, Goldstein retained Ruth Yang, his third attorney in as many years. Yang, who advised that she had been retained by Goldstein with Jarecki’s assistance, informed the Review Team that Goldstein “would like to make a statement to the Panel.”<sup>515</sup>

## 3. Goldstein Agrees to Speak to the Review Team

On March 8, 2013, Ross Goldstein wrote a letter, through his counsel, to the Review Team. He claimed that he had never participated in or observed any sexual acts in the Friedman house. Rather, he said, he was pressured by the police and the prosecutor to “admit” his guilt. He claimed police arrested him on several occasions, and that during his first arrest, in June 1988, officers dragged him into a vehicle and attempted to interrogate him without first informing him of his rights. Goldstein was first arrested on

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<sup>512</sup> A603.

<sup>513</sup> A604.

<sup>514</sup> Email from Andrew Jarecki to Madeline Singas, Chief Assistant District Attorney, NCDA, July 26, 2012.

<sup>515</sup> Letter from Ruth L. Yang to Madeline Singas, Chief Assistant District Attorney, NCDA, Mar. 1, 2013.

June 10, 1988, and the report of this first arrest includes a signed *Miranda* waiver, and notes that he was released the same night.<sup>516</sup>

In the letter, Goldstein also stressed that he had never met Jesse Friedman before enrolling as a student at the Village School in November 1986, and that he visited the Friedman home on a few occasions. He further stated that he did not go to the Friedman house at all after February 1987. Goldstein admitted, however, that while visiting Jesse Friedman at his house, Jesse had showed him a child pornography magazine that, Jesse said, belonged to Arnold Friedman. Goldstein also recalled seeing the computer class in session several times, and stated that, on one occasion, he observed a child play a “pixelated” pornographic videogame, but only while the child was unsupervised. Otherwise, Goldstein’s statement was wholly exonerating as to both himself, and those counts of the third indictment in which he was alleged to have acted in concert with Jesse Friedman.

The following week, on March 14, 2013, Ross Goldstein met with the Review Team, and two members of the Advisory Panel, in his attorney’s office. There, Goldstein stated that he first met Jesse when he enrolled at the Village School in November 1986. Up to that point his life was marked by drug use, particularly marijuana and LSD, poor grades, and depression. He was drawn to Jesse based upon their mutual love of music, specifically the Beatles. He stated that neither his friends nor his then-girlfriend liked Jesse, the former for Jesse’s eccentricities and the latter because she believed Jesse was bisexual. Goldstein stated that as he continued at the Village School and made more friends, his relationship with Jesse deteriorated. By February 1987, he said, their friendship had ended.

Asked why, then, he pled guilty to such serious charges, Goldstein stated that he had no choice but to cooperate with the police because the other option, standing trial with Jesse, was unimaginable and would surely mean spending the rest of his life in jail. And, Goldstein added, the promise of a Youthful Offender adjudication and favorable sentence if he cooperated was attractive, considering the risk of decades of jail time if he did not cooperate.

Goldstein confirmed that he was interviewed by police investigators in the presence of his attorney, Michael Cornacchia, on four occasions beginning in September 1988 and concluding in October 1988. According to Goldstein, by that point, the police already had a chosen “narrative,” which Goldstein was there to complete by confirming details they presented to him, or by embellishing when necessary. When confronted with the transcript of various portions of his interview in which he responded to open-ended questions with lengthy, detailed, uninterrupted answers, Goldstein repeated that he was simply embellishing the “narrative.” In this manner, Goldstein explained away the

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<sup>516</sup> See Section I.H.3(c), *supra*.

several statements, including his detailed description of how he first saw Jesse touch a child's penis during a videogame that he believed to be a "sex education program."<sup>517</sup>

Goldstein was also asked about a therapist who provided a report to the court indicating that Goldstein was troubled, remorseful, had come to grips with the magnitude of his crimes, and would benefit from continued treatment. Goldstein acknowledged confessing to this therapist but said that he was forced to continue the lies if he wanted to be offered a lenient guilty plea.

Goldstein also said that he believed the police somehow manipulated the dates of the charges. Originally, he told the police that he met Jesse when he began to attend the Village School in November 1986. Because that date did not align with police accounts, which implicated Goldstein in criminal activity in Spring 1986, Goldstein said, he felt compelled to change his own narrative. He did so, he said, by lying to police, and explaining that he had actually met Jesse Friedman earlier that year, but was too embarrassed and confused to report those interactions, because it was during that time that he became involved sexually with Jesse.

In addition, the Review Team asked Goldstein why he refused to be interviewed prior to this meeting. He claimed that he had always wanted to meet with the Review Team but that his attorney, Steven Kartagener, never informed him of the Team's offer. Kartagener, he said, was a friend of his parents, and only dealt directly with them. Goldstein agreed to waive the attorney-client privilege between himself and two of his prior attorneys: Kartagener, who represented him on his appeal, and Michael Cornacchia, who represented him through his cooperation with the prosecution and plea of guilty.

The Review Team also questioned Goldstein about his pre-*Capturing the Friedmans* statements to Marc Smerling, in which Goldstein indicated that his version of events included "grey area[s]" that would not totally exonerate Jesse Friedman, nor make the police "look bad all the way." Goldstein was unable to account for those remarks.

#### 4. Related and Subsequent Interviews

##### a. *Goldstein's Attorneys, Steven Kartagener and Michael Cornacchia, Declined Interview Requests*

Though Goldstein signed waivers allowing the Review Team to interview his prior attorneys, both declined to be interviewed regarding their representation of Goldstein, even after being informed of Goldstein's recent statement to the Review Team. Cornacchia acknowledged that he was present during Goldstein's interviews with the police, but refused to say anything more.

Goldstein's first post-conviction attorney, Steven Kartagener, did comment on one matter. He said that Goldstein's claim that he was never informed by Kartagener of

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<sup>517</sup> Goldstein Interview 1 (Sept. 8, 1988), at 28-38.

the Review Team's interview requests was false. To the contrary, Kartagener confirmed that he spoke with Goldstein directly—and, separately, with Goldstein's parents—about the Review Team's interview requests on numerous occasions throughout 2010 and 2011. Each time, Goldstein was informed of the request, and specifically declined to speak to the Review Team.

*b. Witness 29, Ross Goldstein's High School Friend*

The Review Team met with Witness 29, a friend of Goldstein's who he had met in sixth grade and who remained a close friend throughout high school. Witness 29 confirmed knowing Goldstein well at the time of his arrest, but stated that Goldstein changed when he met Jesse Friedman in November 1986. Jesse and Goldstein became friends thereafter, and Witness 29 and Goldstein visited Jesse's house on at least one occasion. Jesse and Goldstein had many mutual interests, including the Beatles, and spent an increasing amount of time together. They used drugs together, including marijuana and LSD, and Goldstein began wearing "John Lennon glasses." Nevertheless, Witness 29 was shocked when Goldstein was arrested. Everyone at school believed that it was a case of mistaken identity. In fact, Witness 29 was preparing to testify as a character witness on Goldstein's behalf.

Witness 29 lost touch with Goldstein for a short period of time after Witness 29 began college. Witness 29 heard about Goldstein's decision to plead guilty from a mutual friend and immediately called Goldstein to inquire what had transpired. Goldstein said that he needed to explain in person. Witness 29 drove to his house and was met by Goldstein's mother, who uncharacteristically screamed at Goldstein not to say anything.

Regardless, Goldstein insisted on a private discussion with Witness 29, behind his locked bedroom door, and to his mother's obvious discontent. There, while Goldstein's mother continued to insist, shouting through the door, that he say nothing, Goldstein admitted to Witness 29 that during a period of heavy drug use, "while they were tripping," Goldstein "got seduced by Jesse and Jesse went down on him." Jesse told Goldstein he had a videotape of the incident, and threatened to send it to Goldstein's girlfriend, parents, friends, and teachers if Goldstein did not cooperate with Jesse. With this videotape, Goldstein admitted to Witness 29, Jesse blackmailed Goldstein into photographing children in the Friedman classroom. (Witness 29 understood this meant photographing sex acts.) In return, Arnold Friedman paid Goldstein.

In later interactions between Goldstein and Witness 29, Goldstein confirmed that he felt guilty about something, which he did not specify. Beginning with a letter he wrote to Witness 29 from prison, dated December 10, 1989, Goldstein said that he was "battling his demons," and went on to say that "I did stupid and terrible things and I feel much remorse." He concluded by saying that it was "too bad I can't get the help and treatment I need." In a second letter dated December 31, 1989, while still incarcerated, he claimed

that he “made tragic mistakes” and “would tell everything in due time. No lies.”<sup>518</sup> During Goldstein’s 1990 appeal, Goldstein said he “disassociated himself from Jesse Friedman and his activities” because he, Goldstein, “became repulsed” by them.<sup>519</sup>

Years later, when Goldstein was expected to die from a life-threatening illness, Witness 29 visited him in the hospital to say goodbye. Witness 29 forgave him, and told him that he “wasn’t evil.” Goldstein acknowledged Witness 29’s presence, but said nothing. Witness 29 believes Goldstein’s feelings of guilt, and references to doing “stupid and terrible things,” could have several meanings, other than that he photographed acts of molestation. For instance, according to Witness 29, Goldstein may have been referring to his heavy drug use or to the fact that he was a terrible friend who often lied about his whereabouts.

After that, except for a brief meeting sometime in 1992-94, Witness 29 did not speak with Goldstein until March 18, 2013, when Witness 29 telephoned him to inform him of an upcoming meeting with the Review Team. In that call, for the first time, Goldstein told Witness 29 that he actually was *not* guilty, that nothing sexual happened between him and Jesse, and that he was pressured to admit his guilt so that he could get the deal being offered by the District Attorney. Witness 29 asked Goldstein if he remembered confessing to Witness 29 on the day of his guilty plea. He said he did not, but was not surprised, because that would have been consistent with the narrative he felt forced to adopt.

*c. Marty Berenberg, Village School Faculty*

Two years before meeting Goldstein, the Review Team spoke with Marty Berenberg. At the time of the original prosecution, Berenberg was a faculty member at the Village School, where he acted as Jesse’s advisor, and later became his private therapist. Berenberg’s first recollection of Jesse was when he offered to let Jesse manage the school’s recording studio. Jesse, he said, happily accepted.

Berenberg first met Ross Goldstein, too, in the Village School’s recording studio, but before Goldstein began class there in 1986. Jesse Friedman had brought Goldstein to the Village School, Berenberg said, to show off the recording studio. Goldstein enrolled shortly thereafter. He was sure of this, because he remembered being greatly impressed by Goldstein’s rendition of the Beatles classic, Let It Be. Berenberg said he remembered Goldstein because of his musical ability, not because he was, at that time, a student at his school.

5. Analysis of Ross Goldstein’s Recantation

Ross Goldstein’s credibility is suspect. Today, he is unable to explain why he came forward in 2013, despite being contacted by the Review Team more than two years

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<sup>518</sup> Witness 29 allowed the Review Team to read, but not copy, these letters.

<sup>519</sup> *Ross G.*, 163 A.D.2d at 530.



prior. His only explanation, that he always wished to speak to the Review Team, and that his attorney Steven Kartagener never relayed the Review Team's interview requests to him, is completely contradicted by Kartagener himself. Further, Goldstein cannot account for how his story, described to the filmmaker in "shades of grey" eight years ago, has since become so black and white.

First, Goldstein struggled when relating some events to the Review Team, and often blurred the sources of his information. He told the Review Team, for example, that children were able to bring computer disks home from the class. Asked how he knew this, despite his claim that he was not involved in the computer class, he admitted that he only knew this because Andrew Jarecki had told him so.

The totality of the evidence, too, does not support Goldstein's current recantation. His statement does little to explain why six witnesses were able to identify him as an abuser during the original prosecution—and why one witness, during an interview with the *Capturing the Friedmans* team, stated that Goldstein, or someone fitting his description, would "always come around" the class. Goldstein's admissions to police were also highly specific, and unlikely to have been fabricated, either by Goldstein himself or by the police. Though Goldstein admits he invented key parts of the story he told the police—such as, that he and Jesse began a homosexual relationship in 1986—this is a highly embarrassing detail that, as a teenager, Goldstein would have been unlikely to invent, much less repeat to his close friend, Witness 29, just months later.

In 1989 Goldstein's confession to Witness 29, in which he said that he was forced to photograph Arnold Friedman's computer students, and that Arnold Friedman paid him, severely undercuts his 2013 recantation. That Arnold Friedman would pay Goldstein to photograph sexual acts is consistent with the Friedmans' predilection for photographing, videotaping, or otherwise documenting the experiences of their lives. Though Goldstein now says that he confessed to Witness 29 because this, too, was part of the narrative he had to adopt, the confession represents a novel fact pattern that does not appear in Goldstein's interviews, or in his allocution to the Court during his guilty plea. (In one of Goldstein's interviews, he says Jesse "victimized" him, but he does not then link this "victimization" to anything else, or suggest that any money changed hands.)

There is, however, one person who did corroborate Goldstein's account about being paid to photograph the students: Jesse Friedman. In an *unaired* portion of his 1989 interview with Geraldo Rivera, Jesse stated that Arnold "paid [Goldstein] to take pictures," after he "walked in on" the class one day.<sup>520</sup> This admission was never broadcast, and Goldstein and Jesse Friedman both told the Review Team that they did not speak between 1988 and (at least) 2012. This suggests that Goldstein's unsolicited confession to Witness 29 reflects the actual truth of the matter, as opposed to some agreed-upon story. Goldstein claims that his account to Witness 29 was an effort to stick to the narrative required to sustain his guilty plea through sentencing. However,

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<sup>520</sup> A532-33.

Goldstein was under no obligation to volunteer any narrative to Witness 29. This admission was not a requirement of his plea, nor would the police or prosecutors ever learn of their private conversation. He never chose to disavow it until recently, even to Witness 29, and despite Arnold and Jesse Friedman’s claims of innocence. In letters to Witness 29 Goldstein wrote that he had done “stupid and terrible things” and had “made tragic mistakes” while, simultaneously, Arnold and Jesse penned letter after letter declaring their innocence. For all of these reasons, Ross Goldstein’s current narrative is unworthy of belief. Even when gravely ill and expected to die, Goldstein was prepared to leave Witness 29 with the impression that he had, in fact, participated in the sexual molestation of children.

Finally, even taking all of Goldstein’s recent statements as true—including his assertion that he met Jesse only in November 1986—he directly contradicts Jesse Friedman’s initial claim that the two barely knew each other, that there was no child pornography or pornographic videogames near the computer class, and that Goldstein was never present during the computer class. And, since Goldstein was only a witness for the third indictment, his removal from the case would affect only that indictment, leaving the first two indictments undisturbed. But there is no reason to take Goldstein’s recantation as true.

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Lastly, it bears mentioning that, as explained elsewhere, “[t]here is no form of proof so unreliable as recanting testimony. In the popular mind it is often regarded as of great importance. Those experienced in the administration of the criminal law know well its untrustworthy character.”<sup>521</sup> Goldstein has every motivation to recast his story to present a superficially plausible claim of innocence, but there is no reason to credit it.

#### **F. Jesse Friedman’s Various Accounts of Events Are Self-Serving and Not Credible**

Jesse Friedman cooperated extensively with the re-investigation. He sat for three interviews with the Review Team, a fourth with the Advisory Panel and, after waiving confidentiality and applicable privileges with doctors and lawyers, provided the Review Team with thousands of pages of his personal letters and papers. However, he nonetheless has not been candid, and implausibly tried to explain away some important facts. Jesse’s account is that every public statement he made about the case before 2004 was a lie, induced either by the police, by the Court, or by anyone but himself. Only now,

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<sup>521</sup> *Shilitano*, 218 N.Y. at 170; *see also* *People v. McGuire*, 44 A.D.3d 968, 968 (2d Dept. 2007) (recantation testimony not credible due to “numerous inconsistencies,” and because the witnesses “failed to provide a credible reason for why they originally named the defendant as a fellow shooter and did not come forward earlier to exculpate the defendant.”). Indeed it is the rare case where a long-delayed recantation will have any indicia of reliability. Some factors—all negative here—include the “demeanor of the recanting witness, the existence of corroborating evidence, the reasons offered for the recantation of the previous testimony,” and “the relationship between the recanting witness and the defendant.” *People v. Deacon*, 96 A.D.3d 965, 969 (2d Dept. 2012).

he says, is he telling the truth. This disturbing duality has the virtue of explaining away inconvenient facts in the record—like his guilty plea—but several contradictions undermine his claim to innocence.

### 1. Jesse's Account of the Case

The Review Team interviewed Jesse Friedman on three occasions: on February 4, 2011, on February 11, 2011, and on June 14, 2011. Each of those interviews was conducted in Ron Kuby's law office. Jesse Friedman, his wife, and Ron Kuby were present for all interviews. Jesse would later meet with the Review Team and Advisory Panel in 2012, to read a prepared statement. The below information reflects Jesse's contemporary recollection of the case, as shared with the Review Team and the Panel in these interviews.

Jesse described his father as a workaholic, and as an emotionally distant man. His family life was extremely unhappy and his parents were distant and constantly fighting. Jesse would kick holes in his bedroom walls to get his parents to stop fighting, or to acknowledge him. While their home movies may portray the family as loving and playful, it was merely an act for the camera. From age twelve through fifteen, Jesse was "socially isolated," a condition that improved only when the school district removed him from his school and placed him in the alternative Village School where, according to him, he flourished. Jesse admitted that he had used drugs—acid about three to four times, and psychedelic mushrooms once—but said that he never used acid when the case was pending. Confronted with Dr. Pogge's notes, showing that Jesse claimed to have used acid "10-12 times"—as recently as three weeks before his Fall 1988 interview with Dr. Pogge—Jesse said, "I don't know why I said that to him." Similarly, Jesse's letters,<sup>522</sup> and an appointment book entry with only a single word—"Acid!"—dated October 25, 1986, all show that he used drugs during the time in which he was alleged to have committed crimes.<sup>523</sup>

The computer classroom was set up on the ground floor of the house, with three children assigned to a table. Two tables were set-up in front of one another with the children at each table facing each other, with computer terminals between them. There was another table set up separately from those two tables with the three children sitting there facing the wall. Jesse's job was to set up and then deconstruct the space for class. He also would wait at the front door to try and recognize the cars when the parents came to pick up their children. He remembers that he was there to maintain order. Some of the students enjoyed teasing Jesse. The door to his own bedroom was near the classroom, he said, but was always kept closed, such that he believed the students did not even know it was a bedroom. (This detail was contradicted by Witness 25.)

He claims he found out about the federal search warrant from his mother when, driving back to college a week after the search, he complained to his mother that his

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<sup>522</sup> See A449.

<sup>523</sup> See A507, calendar entry, Jesse Friedman (Oct. 25, 1986).

room was messy, and asked her to stop rifling through his belongings while he was away. Elaine responded by explaining that the FBI had gone through his room, not she.<sup>524</sup> Jesse said that it was at this point that his father explained to him and his brothers that he had had sex with his brother Howard when they were kids. Arnold told them he was homosexual as a teen, and that as he grew up he found himself attracted to, and fixated on, his young partners. Arnold confessed his interest in child pornography to his sons but (consistent with the tale recounted in “My Story”)<sup>525</sup> explained that his therapist said it was fine to look at the pictures as long as he did not act on his urges. Arnold told his sons that he wrote to pedophiles and exchanged magazines with someone who turned out to be a federal agent.

Jesse was arrested the following week and, by his account, he did not know why. He recalled that, on his first night in jail, Arnold told him that he had ordered those magazines because of the stress Jesse had caused him being such a problematic child. He maintained that he never saw Arnold touch his computer students and that his father was innocent. Jesse explicitly linked his own innocence with his perception of Arnold’s: he said he was sure his father was innocent, because he knew he was too.

Jesse felt alone during the original investigation and prosecution of himself and his father. Elaine, his mother, wanted Arnold to plead guilty, but Jesse and his brothers felt that Arnold’s plea would negatively affect Jesse’s case. Because she disbelieved Arnold, Elaine came to doubt Jesse’s innocence too.

When Goldstein was arrested, Jesse said, he found it nonsensical and mysterious. Goldstein, he said, had been to the Friedman house at least once, to see Arnold’s sitar, and was never at the house during computer class—a fact that Goldstein contradicts. Despite having a common interest in music, he said they were not friends, and they exchanged music at school. Jesse claimed that the “death blow” to his case was the third indictment, not Goldstein, who Jesse believed was just one more witness to discredit. After the third indictment, Jesse said he was certain that he would be found guilty. Panaro stopped preparing for trial, Jesse claimed, when Elaine Friedman said she did not want Jesse to proceed to trial. With that decision made for him, his interest shifted to securing a lenient sentence. Then, Panaro told him he could probably get a sentence closer to five years if he blamed it all on his father. Although Jesse never told Panaro that Arnold had abused him until the time of his pre-plea interview<sup>526</sup> (discussed in Section I.J.3, *supra*), Panaro always assumed that this was the case. Jesse felt that Panaro took too much of an interest in Jesse, and it exceeded a client-based relationship.

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<sup>524</sup> Jesse gave a different account of this discovery to a *Newsday* reporter in 1989: in that version, Jesse’s mother told him about the raid immediately, and Jesse brushed it aside. He then “refused to accept later calls from home, and for the next few weeks tried to forget developments in Great Neck.” A910.

<sup>525</sup> See Section I.C, *supra*.

<sup>526</sup> Other notes show that Jesse had, in fact, previously told Panaro that Arnold had abused him, and had also likely abused his other brothers.

Jesse told the Review Team that the decision to plead guilty was made in November 1988, and that he fabricated the story about his father's abuse later. When asked about his decision to appear on *The Geraldo Rivera Show*, Jesse stated that the interview was Geraldo's idea, which Geraldo took up with Jesse's attorney, Panaro. In the lead-up to the interview, Jesse said, he and Panaro disagreed over whether he should go forward with the interview. Panaro might have disagreed with the decision, and Jesse did not remember if he affirmatively wanted to do it, but he was willing, and few others advised against it. Jesse explained that, in retrospect, he simply did not understand at the time that the interview might not be a good idea. Jesse's wife, though, corrected him, and explained that he sat for the interview so that the parole board and inmates would watch and take pity on him.

Jesse discussed his connection with Jarecki, saying that the relationship had evolved over time. At first, the filmmaker would not disclose what information he had uncovered, and Jesse's counsel at the time, Joel Rudin, asked Jarecki to stop contacting Jesse in jail. Eventually they began to trust each other more and the family signed releases granting Jarecki access to the Friedmans' home movies. Jesse said that, after his release, he sat for hours of one-on-one interviews with Jarecki. In one such filmed interview, Jesse said, Jarecki created an atmosphere to simulate that Jesse was still incarcerated. Jesse also explained that his answers were "not fully formed" by the time of these interviews, and the footage was never utilized.<sup>527</sup> Later, Jesse claims that Jarecki told him that Goldstein was interested in speaking to him but was not interested in being involved in the movie. Jesse believed that he could not speak to Goldstein because it would violate his parole conditions but, nonetheless, attempted to contact him, but without success.

## 2. Jesse's Evolving Narratives Render His Statements Unreliable

Jesse Friedman's claims cannot be credited. If his current claims are to be believed, the Review Team must necessarily find that he has lied repeatedly, whenever it suited his needs. It would mean that he lied under oath to the court, as well as to his attorney, his therapists, Geraldo Rivera, and the media. His self-serving accounts of innocence have to be considered in that context.

In studying the various statements Jesse has made throughout the years, it seems clear that Jesse became overwhelmingly concerned with how what he said might play to a larger audience. Jesse explained to the Review Team, for example, that his early filmed interviews with the filmmakers—which the Review Team has never seen—were unusable, because, Jesse says, his answers to critical questions were not yet fully formed. He was learning how to speak in "sound bites" to get the most information to an audience. This concern with how his statements would be interpreted by a larger audience was not a new one.

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<sup>527</sup> Jarecki has not shared this footage with the Review Team.

Indeed, some of Jesse's earliest letters to his brothers demonstrate that his words were carefully planned. For example, when he sat for an interview with a journalist in 1989 shortly after his sentencing, Jesse was asked pointedly about his guilt. In explaining to his brother why he avoided answering the question, he said, "I had not decided what I wanted to say at that time, now I have, I will not lie anymore."<sup>528</sup> Since the journalist was intent on writing the story, Jesse later supplied him with a full recantation, explaining again to his brother that the reporter "might as well write one that will help me, instead of hurt me or be indifferent [sic]."<sup>529</sup> Similarly, when writing to David in July 1989, Jesse claimed (untruthfully) that his appearance on *Geraldo* was planned by his attorney, and then asked for David's advice on how to finesse the resulting, highly damaging interview: "I need your opinion. What do I say to the public to explain what I said on *Geraldo* and why[?]" Truth here seems to have been subordinate to whatever image or story Jesse sought to convey.

This shifting narrative makes it difficult to credit any one version when so many have been proffered, for so many different reasons. Below some key areas of inquiry are studied: statements Jesse made about his father's behavior in the classroom, his own behavior in the classroom, his drug use, his reason for confessing his guilt on national television, and lastly, about the history of his own family.

a. *Arnold Friedman's Behavior in the Classroom*

Before his death, Arnold Friedman admitted, in his own words, that he was a pedophile. This was not a secret: indeed, many boys who would *not* testify as victims in this case freely discussed the lingering and uncomfortable touches that Arnold subjected them to, and the pornographic material that was freely distributed and displayed in class.

Despite this, Jesse initially denied to the Review Team that Arnold Friedman engaged in any inappropriate behavior inside the classroom, or beyond the two children he confessed to abusing at Wading River. This is an implausible position that can only be explained by Jesse's need to avoid admitting that the witnesses against him may, in fact, have been telling the truth—at least concerning his father. Here too, Jesse's position has evolved:

- When speaking with the Review Team in **2011**, Jesse initially maintained that his father never so much as touched any of his computer students.
- By **2012**, confronted with other statements, Jesse acknowledged to the Review Team and the Panel that his father may have been "touchy-feely" with his students, and that his father had molested two boys at Wading River. Still, he steadfastly denied that his father ever touched his students inappropriately. He also denied that any children were ever photographed,

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<sup>528</sup> A483.

<sup>529</sup> *Id.*

and insisted that if pornographic videogames were present in the class, it was by oversight.

- In *Capturing the Friedmans* (2004), Jesse acknowledged that his father “was no saint.” Specifically, he said: “Yeah, so my father had the magazines. And yes, my father admitted that he was a pedophile and had these fantasies. And yes, my father admitted that he was no saint. And that there were times when he slipped.”<sup>530</sup>
- By comparison, in his 1989 interview with Geraldo Rivera, Jesse admitted his absolute complicity in his father’s crimes, saying, among other things, “I fondled them,” and “I was... forced to... pose in hundreds of photos for my father in all sorts of sexual positions with the kids.”<sup>531</sup>
- In a 1989 letter, Jesse’s attorney, Peter Panaro, informed the district attorney’s office that Jesse could speak to “the number of photographs that he knows were taken, when they were taken, [and] by whom they were taken.”<sup>532</sup>
- According to Jesse’s attorney Peter Panaro, Jesse had admitted to him in 1988 that his father was a pedophile, had abused him, and had likely abused his older brothers as well.
- When speaking with his brothers, Jesse was more oblique, saying in an undated letter, likely written in 1988 or 1989, that “Dad used to hug certain children a lot.” Arnold, he said, “felt close to his students and believed that the squeeze on the shoulder or a hug was proper reinforcement for good work. Sometimes he would put a kid on his lap.”<sup>533</sup>
- In the same letter, Jesse went on, saying, “[d]ad might have let his hands wander more than he should of sometime in the Fall 1987 when I wasn’t there,”<sup>534</sup> and even acknowledged that this could have been the reason Witness 3, who would later become a complainant, dropped out of the class.<sup>535</sup>
- Again in the same letter, Jesse reported to his brother that one of Arnold’s *piano* students had reported that Arnold “made passes at him.”<sup>536</sup> He went on, saying, “we all know how scared [Arnold] was of ‘being found out.’”<sup>537</sup>

At a meeting with the Advisory Panel, Jesse acknowledged that his father had confessed to sexually abusing two children at the family’s Wading River home. But this too was a cautious acknowledgment. Jesse’s unwillingness to accept the strong evidence of his own

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<sup>530</sup> A230.

<sup>531</sup> A514-15.

<sup>532</sup> A347-48.

<sup>533</sup> A451-52.

<sup>534</sup> A452.

<sup>535</sup> A452-53

<sup>536</sup> A452.

<sup>537</sup> A453.

father's guilt suggests that he believes that he cannot admit that the victims in this case may have been telling the truth about *Arnold*—no matter how obvious Arnold's guilt—for fear that the Review Team or the public would conclude that they were also telling the truth about Jesse.

*b. Jesse Friedman's Behavior in the Classroom*

In conversations with the Review Team, Jesse Friedman denied touching the children, sexually or otherwise. But this absolute refusal to acknowledge any contact with the children, or any behavior inconsistent with the simple teaching of a class, contrasts starkly with earlier statements:

- According to his uncle, Howard Friedman, Jesse admitted to him that he was occasionally violent with the computer students.
- In his **1989** interview with Geraldo Rivera, Jesse freely admitted that he “fondled” his father’s students. He said he was forced “to pose in hundreds of photos for my father in all sorts of sexual positions with the kids. And the kids likewise with myself.”<sup>538</sup>
- In the same interview, Jesse said he would “control” the class, and “keep them in line” if the students “got too riled up.”<sup>539</sup> This tracks with later statements, where Jesse claimed to exert disciplinary control over the class.
- Panaro informed the Review Team that Jesse had told him, in **1988**, that he was “rough” with the kids, and would “smack” them, and that this was why the students hated him.
- In his undated “true confessions” letter, likely written in **1988** or **1989**, Jesse explained to his brother David that, on one occasion, a girl in the class “cried out and when he went over to her she was peeing in her pants.” Nobody else noticed, he said, and he did not want to touch her, but he nudged her into the bathroom and mopped the floor.<sup>540</sup>
- In the same letter, Jesse wrote that the students “hated the idea of waiting inside for their moms,” and that he “would have to keep them in and also keep them from beating each other up.” “I found two things out because of those kids,” he wrote, “one: I loved lifting kids off the ground. It made me feel strong. Two: it showed the kids I was stronger than them plus it was the only way to hold them still. They would attack me, kick me, tickle me, charge at me, try to hold the door closed on me. It became quite a chore!”<sup>541</sup>

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<sup>538</sup> A514.

<sup>539</sup> *Id.*

<sup>540</sup> A449-50.

<sup>541</sup> A450.



- Other incidents occurred during this waiting period, Jesse said. Once, he wrote, “a kid’s sweatpants fell down while I was stopping him from killing another student. He had on underwear, and didn’t seem to care.”<sup>542</sup>

To the Review Team, though, Jesse steadfastly maintained that he never physically contacted the computer students.

c. *The Geraldo Rivera Show*

Jesse first told the Review Team that he appeared on *Geraldo* in the hopes of mitigating his sentence. Reminded that he already had been sentenced, Jesse’s wife volunteered that Jesse sat for the interview to curry favor with the parole board, or to communicate to prison officials and inmates that he, too, was a victim. Nothing from the record supports that claim.

- In a **1989** letter to his brother David, Jesse said, “I need your opinion. What do I say to ‘the public’ to explain what I said on Geraldo and why. Thanks to Panaro’s encouragement, I have completely ruined my credibility.”<sup>543</sup>
- In an earlier **1989** letter to a reporter for *Newsday*, Jesse said that, “Peter convinced me that I should give the public what they are willing to accept. He did not feel that anyone would believe the truth—so I told a sympathetic story.”<sup>544</sup>
- Panaro told the Review Team that, in **1989** conversations with his client, Jesse was strongly in favor of the interview. Jesse went on to sign a **1989** statement expressing his desire to “get [his] side of the story across to the media at any cost, even death.”<sup>545</sup>

David remained under the impression that the *Geraldo* interview was Panaro’s idea until 2004 when, at a public viewing of *Capturing the Friedmans*, David repeated this claim, only to be corrected by Panaro himself, and by Andrew Jarecki.

d. *Drug Use*

Jesse told the Review Team that he used LSD, but only three to four times in high school, and that he had stopped using drugs altogether, even marijuana, by the time of his senior year. This version of events, too, finds little support in the record.

- In a **1989** newspaper article, Jesse was reported to have said that he was “stoned on a daily basis” in high school,” and “was using LSD.”<sup>546</sup>

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<sup>542</sup> *Id.*

<sup>543</sup> A499.

<sup>544</sup> A474.

<sup>545</sup> A463.

<sup>546</sup> A912.

- According to notes from a defense expert, Dr. David Pogge, Jesse used acid ten to twelve times, most recently in Fall **1988**. Dr. Pogge classified him as a “very heavy drug user.”
- In an undated letter, Jesse explained to his brother David that, during one of the classes, he “must have been 17 and doing a lot of dope.”<sup>547</sup>

Given such conflicting accounts, Jesse’s credibility even on smaller matters, like this, becomes suspect.

*e. Federal Search Warrant*

Lastly, Jesse gave different accounts of how he learned about the federal search warrant that launched the investigation of his father’s computer classes.

- To the Review Team, in **2011**, Jesse claimed that he was not at home during the execution of the warrant, and that his parents did not tell him about it when it happened. Rather, he said, his mother told him one day while driving him back to college. Jesse had blamed her for making a mess of his room, he said, and Elaine countered, saying it was actually the FBI who ransacked his room.
- In a Spring **1989** interview with *Newsday*, Jesse said his mother called him at college to tell him about the search warrant. Thereafter, “he refused to accept calls from home, and for the next few weeks tried to forget developments in Great Neck.”<sup>548</sup>
- In his Winter **1989** interview with Geraldo Rivera, Jesse said that he came home from school and found everything out of place. His father took him aside, told him the police had come, and that his mother had found out “about the magazines and the photos and all.”<sup>549</sup>

Even this basic detail, an important event in Jesse’s life, is subject to change depending on Jesse’s audience.

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<sup>547</sup> A449.

<sup>548</sup> A910.

<sup>549</sup> A524-25.

*f. Prison Disciplinary Record*

While imprisoned in 2000, Jesse was punished for writing and distributing “fictional” stories that described violent and disturbing sexual acts, including incest involving a father and his children, sex with a dog, and child rape. Jesse was also disciplined for possessing a photograph of two pre-pubescent girls—at least one of whom is naked—torn from the pages of a magazine. The image was the work of photographer Sally Mann, and it appeared in *Harper’s Magazine* in 1992, from which Jesse Friedman removed it. (For the image in question, see right.)

Confronted with the photograph during a recent interview with the Review Team, Jesse initially sat silent, stunned, before reaching for it. Inspecting the image, Jesse struggled to explain why he possessed the photograph.

Instead, Jesse’s attorney supplied a justification, proclaiming that Jesse was a “political prisoner” and his possession of the image was nothing more than a “political statement.” Satisfied, Jesse adopted his attorney’s justification. The reasoning does little to explain why the picture was found in Jesse’s cell, in violation of the terms of his sex offender counseling program.



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These competing narratives—some related to small matters, but others concerning important case facts—all severely affect the Review Team’s ability to find Jesse Friedman credible. In the final analysis, it is difficult to credit an account today that might change tomorrow.

## **V. Conclusion**

In 2010 District Attorney Kathleen Rice directed a full, thorough, and fair review of Jesse Friedman’s 1988 guilty plea to criminal charges involving the sexual assault of children. All necessary resources were made available for this effort. District Attorney Rice assigned members of her executive staff to the Review Team. The time of these attorneys was not restricted, and over the course of the review, thousands of hours were devoted to the investigation. With open minds, willing to follow the evidence wherever it led, and with no predetermined views of the original case, the efforts to recreate the case began. Those efforts are well documented in this report.

To further ensure fairness, transparency, and integrity, the District Attorney enlisted the expertise and assistance of four prominent experts. These individuals were fully engaged in this process. They attended meetings, consulted on investigatory steps, were briefed on developments, and guided many of the Review Team’s efforts. They remained abreast of information, read earlier drafts of this report, assisted in the editing process, and provided overall guidance. The District Attorney is thankful for each of the

expert's professionalism, dedication, and engagement, and this entire process has benefited from their invaluable guidance and expertise.

Once this endeavor began, the Review Team sought information from any available source. The Team was initially encouraged when the *Capturing the Friedmans* filmmaker offered access to information which, he promised, would greatly impact the re-investigation efforts. However, much of the promised information did not materialize. After two years of negotiations concerning his role in the process, in which Jarecki imposed several unrealistic demands, the filmmaker ultimately gave the Review Team and his audience only parts of recorded interviews. Several key interviews were never shared at all—such as, interviews with Jesse Friedman, members of the Friedman family, and with the codefendant, Ross Goldstein. To be fully relevant to this investigation, the footage and other statements provided by Jarecki should have been turned over in their entirety. To satisfy the legal standard to overturn Jesse's conviction, much more was required.

Ultimately, the Review Team finds that Jesse Friedman was properly convicted, pursuant to his voluntary guilty plea. Several factors inform this conclusion. First, over the course of the original investigation, sixteen children offered detailed, lengthy, and documented accounts of criminal sexual abuse suffered at the hands of Jesse Friedman. The children who offered statements against the Friedmans were not in preschool. Instead, they averaged almost eleven years of age. The investigation into Arnold Friedman by the Nassau County Police Department was fast-paced: it began on November 12, 1987, with the very first child interviewed by the police, that same day, disclosing criminal conduct by Arnold Friedman. At the start of the investigation Jesse Friedman was unknown to police, but within two weeks, by November 24, two children had implicated Jesse Friedman in criminal sex acts. By December 17, 1987, a little more than four weeks into the investigation of Arnold, eleven children had implicated Jesse Friedman in serious sexual criminal behavior. Many more shared information with the original investigators that led them to credit the statements of criminal behavior.

It is not the case that the police systematically used high-pressure interview tactics to generate false accusations. The re-investigation showed that many of the children were visited by the police officers only once before the first two indictments were filed. Different detectives took incriminating statements from this group of children. There is no way to know for sure if preliminary discussions with the police, their parents, or their classmates affected the testimony of these victims. While police contact increased, and questioning intensified in the third phase of the case, the Review Team did not find that those factors influenced the testimony that gave rise to third indictment. The Review Team's interviews with the original detectives, the students of Arnold Friedman, and their parents, support the conclusion that the police did not elicit inculpatory statements using flawed investigative techniques.

There is no evidence that therapy distorted children's memories at the time they testified. "Group" therapy was not offered until December of 1988, a full year after the case began, and weeks after the last of three indictments against Jesse Friedman had already been filed, and therefore could not have affected the case. Many parents sought

individual therapy for their children after their children disclosed abuse to the police, but it is unknown how many children were placed into therapy *prior* to disclosing. Within a little more than four weeks of the investigation's commencement, eleven children reported that Jesse Friedman had sexually abused them. In such a short time period, it is difficult to imagine that therapy would have played a significant role, if any, in influencing the case's early development. Equally unavailing is the theory that hypnosis generated any false allegations. No credible showing was made that any child who gave testimony in any of the three grand jury presentments was hypnotized. The mass-marketed assertion, that the majority of children only gave incriminating statements to the police after many months and many sessions of distortive and suggestive therapy, simply is false.

Jesse's criminal conduct was not limited to the thirteen children who testified against him, and whose charges were sustained after judicial review of the grand jury minutes. Rather, the Review Team discovered signed and sworn statements from three additional boys, who gave detailed accounts of sodomy and sexual abuse committed against them by Jesse Friedman. Before this review, these three additional victims were unknown outside of law enforcement. Similarly, a fourth non-testifying victim came forward to describe to the Review Team previously undisclosed abuse he suffered at the hands of Jesse Friedman, bringing the total number of victims to seventeen.

The Review Team also spoke with three of the victims who testified against Jesse in the grand jury. Each confirmed that he was sexually abused by Jesse Friedman. Each told their separate story, marked by pain and recovery. Each man recounted years of shame and humiliation, suffered because they were male victims abused by other men. Despite the passage of more than twenty years, their recollections were vivid. Three more men wrote anonymously at the time of the release of the movie in 2004. In letters, they affirmed the abuse that Jesse inflicted on them, and expressed their anguish at reliving this horrible chapter in their life. It is clear, then, that many of Jesse Friedman's victims stand by the accounts they gave as boys.

Ross Goldstein, a teenager in 1988, and Jesse's peer, was also accused of crimes. After being consistently identified by complaining witnesses, Goldstein was arrested and, with his attorney present, provided hours of transcribed statements outlining the criminal acts he and Jesse engaged in with the boys at the computer classes. This is no small matter. In addition to the sixteen children who gave written accounts of the abuse Jesse inflicted on them, Goldstein corroborated those statements. For almost twenty-four years Goldstein maintained his silence, unwilling to join the Friedmans in their efforts to upset their convictions. When approached by the filmmakers in the early 2000s, Goldstein told them he could not wholly exonerate Jesse Friedman, nor completely vilify the police. Nonetheless, only recently, he did just that, and disavowed every statement, sworn or otherwise, that he had previously made about some of the charges in the third indictment. This context should raise grave doubts about his candor and the credibility of his recent accounts.

Jesse's current statements, that he and his father are absolutely innocent of all the charges to which they pled guilty, are not credible. Undoubtedly, sometimes defendants

plead guilty when they are not, and their later recantations can be substantiated. Such is not the case here. Jesse pled guilty in court, under oath, to heinous crimes. He pled guilty knowing that his sentence was significant: six to eighteen years in prison. His admissions did not end in court. Instead, he sought out other outlets to explain his actions. Despite his attorney's explicit warning, Jesse reiterated his guilt on national television. In his local newspaper, he was interviewed for an exclusive story where he, once again, described what he did. Far from avoiding these "lies," Jesse reveled in public discussions of his guilt.

Arnold Friedman was a pedophile. By his own admission he molested his younger brother Howard, and two children of close family friends. He chose a profession that would allow him access to young boys. It is well established by those who support Arnold and Jesse, and by those who do not, that Arnold Friedman placed his hands on young boys in inappropriate ways, and showed them pornographic magazines and computer disks. At eighteen, Jesse suffered from significant personality disorders, which were documented by an expert, long before this re-investigation began. That expert noted his psychopathic personality, narcissism, and inability to distinguish right from wrong. These factors cannot be overlooked. These were the men that these children named as their abusers in 1987.

Jesse remained quiet until a movie brought him back into the limelight he craved. Today his numerous statements are contradicted by many others. His explanations for doing the things he did and saying the things he said are tortured and strain credulity. In short, there are few statements that Jesse makes today that can be trusted.

As this review unfolded, the Review Team cast the same discerning eye on the evidence produced by the Friedmans and their supporters, as on the original investigation and prosecution. The Review Team thoroughly analyzed and weighed all amassed information. Special attention was paid to the alleged recantation evidence, which was found to be either overstated, not reliable, or unable to be substantiated.

The District Attorney's ultimate decision did not turn on any one piece of evidence or witness account. Instead, it rested upon a consideration of all of the evidence, past and present. No investigation or prosecution is perfect, and this case is no exception. However, in the final analysis, taking all evidence into consideration, and giving it its due weight, Jesse Friedman was not wrongfully convicted.

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